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**PRESIDENTIAL CERTIFICATION ON
PROGRESS IN EL SALVADOR**

**HEARING
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
FIRST SESSION**

FEBRUARY 2, 1983

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PRESIDENTIAL CERTIFICATION ON PROGRESS IN EL SALVADOR

WEDNESDAY, FEBRUARY 2, 1983

UNITED STATES SENATE.
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 4221, Dirksen Senate Office Building, Hon. Charles H. Percy (chairman of the committee) presiding.

Present: Senators Percy, Helms, Kassebaum, Pell, Biden, Sarbanes, Zorinsky, and Dodd.

The CHAIRMAN. Today the Foreign Relations Committee will hear from congressional, administration, and public witnesses concerning the President's recent certification that El Salvador is eligible for U.S. foreign assistance.

This is the third semiannual certification that is required by current law, but in many ways this certification is the most important that Congress has so far received. For that reason, Congressman Crane, we are particularly pleased that you will be the leadoff witness today as you have just returned from an extended trip to El Salvador.

The first certification was made soon after the requirement was enacted, and thus it was really difficult at that time to assess improvements in human rights conditions in El Salvador. We had not gone through that process before.

The second was made soon after the newly elected El Salvadoran Government took office, and it was really too soon to tell what policies that Government might follow.

This third certification comes after the Magaña government has had an opportunity to implement its policies, and thus it is incumbent upon us to review the certification with particular care.

In summary, certification states, and I will quote,

Despite great obstacles, many still beyond its immediate control, the Government of El Salvador has made progress under each of the criteria specified in the law. No major reverses were registered in the commitment of the Government of El Salvador to the criteria of certification.

It notes that terrorist deaths are down from 500 per month in 1981 to less than 200 per month in the last 6 months. It states that land reform is moving forward, and that the political process leading to elections is actually underway. At the same time, however, the Presidential certification admits that, and I will quote directly from it, "Human rights abuses continue, and neither democracy nor the protection of human rights can be taken for granted."

In that context, I, too, would like to register my own disappointment at several events in the past 6 months. These include, first, the unconscionable dismissal of the charges against Lt. Lopez Sibrian in the land reform workers' murders; second, lack of progress in the church women's murder trial; third, the failure of their own forces to curb violence by its own personnel; and fourth, the inability of the political leadership to engage its opposition in a dialog on political reconciliation and participation with guarantees in the political process.

In judging El Salvador's progress, however, I think we must all keep in mind that its Government's reform efforts are under constant fire from both the extreme right and the extreme left, and certainly we have had instances of that in the last 48 hours.

This has made it much more difficult to achieve progress in the institutionalization of democracy in assuring human rights standards, in controlling the armed forces, and in implementing land reform. To complicate matters, terrorism of the right and left have crippled the justice system. In this context, even modest progress in human rights and economic reforms must be seen as a positive sign.

Today, our purpose is to consider the merits of the present certification. We must also begin to consider the future of the certification process itself. This came from this committee and it was overwhelmingly supported and adopted. Having been the author of something as a committee, I think it is incumbent upon us to not just let it stay there cast in cement to continue forever, but we must take a look at it. Has it really served the function and purpose that we intended? Have our goals and objectives actually been met by this process? Is it a plus or is it a minus?

During our foreign aid markup later this spring, the committee will have to decide if the requirement should be continued, whether it should be modified or whether it should be terminated. We have with us today witnesses from the Government and certainly, I would appreciate Congressman Crane's judgment on these particular questions: What is your judgment as to whether the certification process—and we have no pride of authorship whatsoever; the President signed the bill, it was agreed to. Should the process be amended? Should it be abandoned, should it be continued? Your thoughts on these questions would be very helpful to us.

Speaking for myself, I believe that certification requirement has had the modest but useful purpose of supporting the inclinations of moderates in El Salvador to pursue reform policies. Some form of continued legislative support for these policies will clearly be necessary. We did not adopt a certification process until it was made clear to us by a past president, Jose Napoleon Duarte, that he agreed with every goal in the process, and everyone who accompanied him, including the military, said that they agreed with those goals that are in the certification requirement.

The Government of El Salvador realizes, however, that reforms must be implemented not simply because of the certification, but must be implemented to actually insure a stable and democratic political process there in the future. It should be absolutely clear to Salvadorans of all political persuasions that the United States is providing support to the Salvadoran Government not just to win a battle against

insurgents, but also to aid and encourage the development of an equitable and democratic society where there was none before.

The certification is one way that Congress has of seeing that that goal is pursued aggressively. That is my own particular personal view. I have not discussed it with other members of the committee, but certainly we are absolutely openminded as to whether it is serving a useful purpose.

This morning we will be hearing from our distinguished colleague from Illinois, Congressman Phil Crane, who has just returned from El Salvador. After Congressman Crane's testimony, we will hear from Assistant Secretaries of State, Tom Enders and Elliott Abrams. They are accompanied by Mr. Sanchez and, once again, General Nutting, we value your appearance here today.

This afternoon, the committee will hear from public witnesses. Congressman Crane, we welcome you very much indeed to the committee.

Senator Pell.

Senator PELL. Thank you, Mr. Chairman. As we meet today to hear testimony on the third certification of El Salvador, I think the concern amongst our people is becoming more widely expressed.

I must say in my own State of Rhode Island, this is very much the case. For 40 hours my office building was occupied by seven nuns and two other churchwomen who were very concerned, upset, and understandably so, at the lack of progress in El Salvador.

I think the intensity of feeling outside of Washington is more acute than it is in Washington. And I think those of us who have seen these good people come out in a spirit of idealism and not out of any desire to upset the peace or cause harm are very much impressed. And I for one, rather than condemning or criticizing the nuns who occupied my office for the last 40 hours, praise them for the intensity of their feeling, wish them well, and only hope that we deserve their support and that their prayers have an impact on us in Washington.

But as with them, I am struck, too, by the reports from the credible organizations that we will hear this afternoon concerning continuing human rights violations. And I am also concerned by the inconclusive nature of the certification process and the sense of frustration felt by our constituents and by those of us who represent them in Congress.

The administration contends there is improvement in the various categories of the certification, including human rights, but also points to some of the problem areas such as the prosecution of the cases involving the murders of the four churchwomen and the two land reform specialists.

I know that some of the public witnesses this afternoon are prepared to be very critical of the points made by the administration in the certification. Americans are concerned, too, over the lack of real signs of progress in the cases of the murdered Americans, and now there is another case that has to be addressed.

How many more setbacks in what exists of the Salvadoran judicial system are going to be produced before the murderers of the churchwomen are tried for their crimes? Will the question of the involvement of superior officers ever be directly addressed? What kind of judicial system allows one of the chief suspects in the case of the land reform

specialists who were murdered, to be free and on active duty in the military?

When are we ever going to find out what happened to the American journalist, John Sullivan? Why are the murderers of Michael Kline still on active duty in the military?

Finally, what really is being done to bring the parties in the conflict together to begin a dialog to reach a political solution? And when are we, the United States, going to get behind the initiatives of key Latin American States such as Mexico which are closer to the problem and have more at stake there than do we, to follow their lead so that other avenues which might lead to a political solution are fully explored?

I think the analogy we have here is that one side is all black and the other side is all white, but those are extremes. They do not represent majority viewpoints, and the grays that are in between should be brought together. And I believe our administration is lacking in not taking the initiative in pressing for discussions between the left and the right.

I look forward to the administration's testimony and also to that of our colleague, Mr. Crane, who has just been in El Salvador.

Mr. Chairman, I have a statement here from Senator Cranston, and ask that it be inserted in the record.

The CHAIRMAN. Senator Cranston's statement will be inserted in the record at this point.

[Senator Cranston's prepared statement follows:]

PREPARED STATEMENT OF HON. ALAN CRANSTON

Today, the Senate Foreign Relations Committee is conducting hearings on the President's certification of progress in human rights, in implementing essential political and economic reforms, and in other areas in El Salvador. Congress established this process through legislation I originally cosponsored in the Foreign Relations Committee. This process has proven to be a valuable mechanism for the Reagan administration, the Congress and the public to gauge the situation in El Salvador. In addition, the process enables us to express our deep concerns about the use of American aid in El Salvador.

As with past certifications, I have considerable doubts about the administration's claim that the Salvadoran Government has improved its record on human rights or that it is any closer to gaining control over its military than it was 6 months ago. In light of the continuing atrocities perpetrated against the civilian population, this latest certification is a profound disappointment.

Glaring faults remain in the Salvadoran criminal justice system. For example, earlier this year Ambassador Deane Hinton affirmed that although some 30,000 Salvadorans have been murdered since 1979, fewer than 1,500 cases of "crimes against persons" have been taken to court and "less than 200 have been sentenced for these crimes." Recently, the Salvadoran Government released the army lieutenant who is the principal suspect in the murders of two American labor advisors and the head of the Salvadoran land reform program. After 2 years, the cases of four murdered American churchwomen remain unresolved. And just last October, yet another American was murdered there, beginning another cycle of judicial obfuscation.

While the total number of violent deaths in El Salvador may have fallen in the last year, the decline has not been a steady one. And the decline may be partly a result of the violence moving into the countryside, where it is difficult to get accurate figures, and partly the result of the exodus or murders of many of the potential targets in the last few years. Even if the new numbers are accurate, they are still shocking.

In the last year, the Salvadoran Government's progress has consisted mainly of conducting an election with a remarkably strong turnout. In addition, the "land-to-the-tiller" phase of the land reform program advanced, but only after

heavy U.S. Congressional pressure revived it. Two of the three phases of the program, however, are dormant at best. I have been somewhat encouraged by Ambassador Hinton's recent statements warning the Salvadoran Government that the future of U.S. aid would be in jeopardy unless certain conditions are met.

These signs do not obscure the unremitting devastation wrought by El Salvador's civil war. The same bleak reports persist about the corruption, the disappearances, the exterminations, and the moribund legal system. The Administration must express to the Salvadoran Government the outrage of the American people at the continuing situation there.

Several of my colleagues and I have been trying to convey this message through a number of measures. We passed legislation to implement this certification process. We called for unconditional negotiations and a cease-fire between warring factions in El Salvador. We attempted to amend the War Powers Resolution to prohibit any—even temporary—deployment of U.S. troops in El Salvador without Congressional approval. During the mark-up of the foreign aid bill for fiscal year 1983, a unanimous Senate Foreign Relations Committee voted to hold military aid to El Salvador at fiscal year 1982 levels, cutting the Reagan administration's request by \$100 million. Most recently, we attempted to attach an additional certification provision requiring the administration to certify that the Salvadoran Government has made substantial progress investigating the deaths of six Americans in that country. We in the Congress will continue to insist that progress be made in the coming months.

The administration must continue to process for the observance of human rights in El Salvador. The administration must press for the maintenance of the land reform program. The administration must press for progress on the cases of Americans murdered in El Salvador. Finally, the administration must press for an end to the bloodshed through cease-fire negotiations possibly including key members of the Organization of American States.

The United States must try to ensure that the government we support is fully prepared to make the political, social and economic changes essential to achieve an enduring peace. These changes, included in the certification provisions, hold the promise of ending the polarization between right and left El Salvador. Unlimited military aid to the Salvadoran Government will not accomplish this goal.

The CHAIRMAN. Thank you very much. I would like to say that Senator Helms did not know that you were coming in this morning. The previous agenda distributed showed you following the administration witnesses. We have moved you up to the leadoff position. He will try to get in before you leave.

STATEMENT OF HON. PHILIP M. CRANE, A U.S. REPRESENTATIVE IN CONGRESS FROM ILLINOIS

Representative CRANE. Thank you, Mr. Chairman, and thank you for this opportunity to appear before the committee. I have a prepared statement and I would ask unanimous consent that it be included as a part of the record. I will try to condense it.

The CHAIRMAN. Without objection, that will be done.

Representative CRANE. Thank you, Mr. Chairman. Before getting into my prepared statement, in response to your question on certification, with all due respect, I think certification is a bad business. The truth of the matter is that while I have jealously attempted to guard prerogatives of the legislative branch of government, I think this is one area where one must place confidence in the Commander in Chief, the President of the United States, in negotiating foreign policy, and there is a certification process that must go through the minds of those policymakers within the executive branch before making recommendations to Congress.

And we, in turn, through such committees as this and our House equivalent, we do exercise a degree of certification analysis before we make appropriations that are requested in behalf of any given country. And I think the certification process really potentially at least restricts the capability of the Chief Executive to make decisions in that one paramount area of responsibility he has, and that is to look to the broader interests of these United States in international affairs.

Now, I will concede the point that you made is valid; that the certification process does apply some domestic internal pressure on countries. But I think that can also be done by congressional committees traveling to those countries, and I think it can be done as well through our embassy people in those countries.

And so, I do not think that certification is absolutely essential as a means of achieving that objective. But I did hear, in fact, from people that I talked to in the country the expression that this has had a positive impact, positive impact in trying to at least assure the steady progress of Democratic institutions, improvement—judicial reforms, certainly you touched upon is one of those areas where there clearly is much more work that needs to be done.

But I have grave reservations about the institution of this new mechanism before we make a determination that will provide assistance to a country.

The CHAIRMAN. Do I conclude correctly then that though you have direct evidence and received direct evidence that people in El Salvador feel the certification process has been a positive thing in helping bring about the very kind of reforms that they feel are essential, that you differ with it as a principle?

Representative CRANE. Right, and as a procedure in the sense that I think it is a degree of infringement upon legitimate executive prerogatives in preserving the appropriate balance between legislative and executive departments. I think that the certification process, potentially at least, has implications that go beyond at least the intent of the Founding Fathers in giving the Chief Executive of the country a greater degree of latitude in making these kinds of decisions as to what serves our national interest.

We still, because of control of the purse strings, obviously have the ability to clip any Chief Executive's wings. But I am not persuaded that the business of certification is really the best avenue down which we could proceed.

The CHAIRMAN. But you are a very practical politician. Put yourself in our shoes, Senator Pell's and mine, or just put yourself in mine for a moment because I had more of an obligation to support the administration. My judgment was that unless we devise something like this, there would be no way you could get a majority vote of this committee, and without the majority of this committee, I do not think it would have gone through the Senate.

So, faced with that practical measure—we have never had to have certification—but this was different. This was a kind of a case that was compared to another Vietnam. This is a case which I had never had, in all my experience, Phil. I had never had to have the U.S. marshals carry nuns and priests out of my office and evict them from the Federal Building because they were closing the building.

Senator PELL. You should have left them there overnight and made available your facilities.

The CHAIRMAN. It was a decision of the U.S. marshals in Chicago. We do things differently than you do in Rhode Island, apparently. [Laughter.]

We worked it out with the administration and they signed the bill. In my judgment, they recognized the practical fact that we could not have a chance to get in and help El Salvador.

So in principle, sure, I agree with you. If we went through this process with every foreign aid bill, we would have to build another Hart Building.

Representative CRANE. Perish that thought.

The CHAIRMAN. But at the time, it was practical. My question is, is it now needed? I am not sure it is or not. I raised the question and I appreciate your answering it offhand.

Representative CRANE. Thank you, Mr. Chairman. As you indicated, my visit was a recent one. It was a little better than 2 weeks ago and it was my first visit to El Salvador. Frankly, I have, as a general rule, not made trips at taxpayers' expense, and this was not one of them, either.

However, in response to those critics of so-called congressional junkets, I have defended much travel by Members of Congress, and most especially by those that have the jurisdiction to make those important decisions involving the expenditure of American taxpayer dollars. And I would hope and pray that every member of every committee that has any responsibility in this area might personally take advantage of the opportunity to visit El Salvador.

I think it is an eye-opening experience, and one of the first impressions that hit me in traveling there was the proximity of El Salvador. While I knew where Central America was, I confess I did not appreciate the fact that it is closer from Miami to San Salvador than it is from Washington to Miami. It, in fact, is right on our doorstep. It is a neighbor down the block, so to speak. And the proximity of El Salvador, as well as the other Central American republics is important in a context that I will try to put some emphasis on momentarily.

The second thing that struck me on that visit was the geographic size. It is approximately the size of Massachusetts. It is a country with beautiful mountain regions, volcanic mountains. It also, however, has a surprising agricultural base, and I was impressed with the fact that the El Salvadorans have the capability of feeding themselves and producing food surpluses and that it used to be a significant exporter of cotton and coffee and sugar.

I say used to be because these products are now suffering from depressed international markets. But further, the Communist guerrillas have been engaged in a concentrated effort to attempt to destroy the economic infrastructure of El Salvador, and in too many instances, unfortunately, they have been successful.

In spite of this ongoing and costly effort to root out the guerrillas by the government and despite the depressed markets for their major exports, and despite also the crushing burden of trying to cope with 250,000 refugees who are the civilian casualties of this conflict, and despite the loss of their productive laborers in the fields, one in spite of all of this cannot accuse El Salvador of the degree of irresponsibility

that has brought so many Third World countries to the brink of economic collapse.

Red ink spending tends to be the cause of this economic chaos in most of these countries, but El Salvador has neither defaulted nor repudiated loans, in spite of all of these adversities.

While my visit, Mr. Chairman, was compressed into 4 days, they were 4 filled days. I had the opportunity to get briefings from Major D'Aubuisson, the head of the constituent assembly, from President Magaña, from General Garcia, the defense minister, as well as from our people, Ambassador Hinton and Colonel Waghelstein, who is the head of our military advisory group.

I met with business leaders, union leaders, military leaders, both ours and theirs, as well as meeting with military people in the provinces, with clergy, with political leaders representing various shades of opinion in their political spectrum, managers of some of their refugee programs, our own people, as I indicated, in a variety of capacities at the Embassy, and I also had the opportunity to talk to individual citizens including a guerrilla defector and some of the patriotic mothers who were very vocal and outspoken in their views on what serves the best long-term interests of El Salvador.

And in anticipation of certification, I am sure that you already have all of the statistical figures about the progress El Salvador has made, both in the human rights category as well as in the progress with respect to democratic institutions, so I will not dwell on that.

I think one thing, however, to keep in mind is that we have had virtually four centuries of experience in the evolution of democratic institutions, and they, by contrast, are in their infancy.

And I do not mean this as an effort at explaining away or rationalizing or in any way justifying violations of human rights, but one must look at that election turnout last year and contrast it with the experience we have had in the United States, and I think we can only come out, after having made that examination, with a sense of shame.

Here they went to the polls under the threat of death, and for all of that, turned out approximately 80 percent of the popular vote, and in our own Presidential elections we get somewhere between 50 and 55 percent voter turnout.

The single item, Mr. Chairman, that impressed me most in conversation with Salvadorans was their deep commitment—and this was from every sector I spoke to—to the continued ongoing development of democratic institutions in their country.

To be sure, there was internal wrangling amongst elements of the political parties. There were personality conflicts, there was bitterness expressed on the part of some of the business people who felt that they had not properly been treated by that Government in terms of compensation for properties that they had lost. For all of that, there was a universality of feeling that democratic institutions were desirable, and they wanted to see them progress and succeed.

From no individual, did I encounter expressions of sympathy with the activities of the guerrillas, and certainly there was a very widespread objection to the idea of negotiations with them unless they were prepared to lay down their arms and work within the democratic process.

On the military side, I had the opportunity to travel by helicopter from San Salvador to La Union which is on the Gulf of Fonseca; directly across the gulf is a peninsula jutting out from Nicaragua. And the military base there also is the site of a naval base.

Our military advisers have managed to increase the professionalism of the Salvadoran Navy and upgrade some of their equipment modestly, and in so doing have provided the Government of El Salvador a capability to interdict many of the supplies that have been coming out of Nicaragua that have come by water. Not all, to be sure, but there is a vast improvement in slowing down the flow of supplies to the guerrillas from that source by water.

The cooperation of the Honduran Government has also very seriously impacted on the ability of the Sandonistas to bring supplies in by land. The naval commander, however, told us—and it was confirmed by our people there—that there is an unchecked air supply that is going on. And in fact, the naval commander told us that the week previous there had been four visual flights that had taken place out of Nicaragua in the daytime. And unfortunately, they have no capability of interdicting the air supply, and as you fly from El Salvador to La Union over the cotton and sugar plantations, you are impressed with the fact that there are literally hundreds of little airstrips throughout that entire countryside and it is totally impossible for the military to attempt to police them all.

I think, in addition to that, we should consider more aid than we are giving them in the training of mechanics and giving them spare parts. We suffered a cracked helicopter blade which was discovered when we were preparing to depart from La Union. I did not realize that it was so serious a problem for sure until we were back in San Salvador when I was told that had we had to undergo any evasive action, we could have dropped that blade.

But I was told further—and this was almost as distressing—that the estimated down time for that helicopter to replace that blade and also to get them in balance probably would take it out of action for almost a week, and they only have 19 helicopters in the entire country of varying vintage.

Another area where I think we could make a significant contribution to their military effort is to—and I am not sure how you would do this exactly—but to try to change the thinking of some of their military leadership. I was informed that once a man makes colonel in their military, he has 26 to 27 years of service in; 30 years is retirement, and in effect, you cannot teach an old dog new tricks. They were trained in conventional warfare and they are engaged in an unconventional war.

And a more effective means, I was informed, of waging an unconventional war would be to develop special forces trained in that in El Salvador, and that this would enable them to wage a more effective prosecution of the conflict against the guerrillas with less resources involved, less cost, and less loss of life. And most especially, less loss of life to civilians.

Another ingredient, it seems to me, of an effective program down there would be development of an amnesty program which I was told they do not have. In talking to this defector, he said it is not easy if you want to leave the guerrillas to turn yourself in. And I think that

this, though, involves recognition of increased necessity for some funding, too, if you are going to persuade guerrillas to bring their arms in and compensate them for so doing.

Finally, El Salvador must be spared the fate of Nicaragua and Cuba, and the United States as leader of the free world, has a unique responsibility in the world to provide leadership and assistance on behalf of personal liberty and free institutions and economic progress and security as well.

And this responsibility, like charity, must manifest itself, of all places, at home. And home in this instance is our own hemisphere. If we were to refuse to provide the modest assistance to El Salvador that is essential to guarantee its independence and freedom, I think it is telegraphing a message to both Cuba and the Soviet Union that Communist subversion can be further pressed.

And we witnessed last year, Mr. Chairman, the arrival, according to reports, of an estimated 1 million illegals from Mexico and some estimates calculate the number of Salvadorans in our country right now at 300,000. I think, frankly, Mr. Chairman, that this is in earnest a deluge from all of Central America, and an escalating flow out of Mexico not for economic reasons entirely, and most of that out of Mexico certainly was dictated for economic reasons.

But if the United States telegraphs a message that it is not willing to provide that timely assistance, most especially to prevent communism and terrorism from succeeding in our hemisphere, I think after El Salvador you are going to see other Central American republics deriving a lesson from that which can have an economic impact on our own country that I think many Americans have not considered.

Let's make no mistake that the Soviet Union and Cuba sense the opportunity in this hemisphere, and they are seeking to exploit it. Since 1978, Cuba has been given arms capable of projecting power beyond that island's periphery. The Straits of Florida, through which more than 50 percent of our men and material for NATO contingencies flow, including virtually all of our oil supply, is now under the gun of Soviet—of Cuban-operated Soviet Mig-23's, *Foxtrot* class submarines and the *Koni* class frigate.

A runway is being built on Grenada which will allow Cuba to support its troops in Africa. Suriname's Colonel Bouterse with Cuban tutelage has decapitated potential opposition, rendering 15 outstanding labor newspapers and student leaders and arresting others, and that is in a country of only 400,000, which is significantly smaller than the average congressional district. So it is a significant loss of leadership in that country.

Grenada and Suriname command the Atlantic Narrows, through which two-thirds of Western Europe's oil flows and through which our Pacific aircraft carriers would have to transit in times of war crisis. Our enemies are clever; they are exploiting our own democratic system to try to neutralize us.

Castro told Colombian radio CARACOL in early January, and I quote, "I think they * * *" referring to the United States, "* * * must first persuade themselves they are losing the war, that they are losing their land." And incidentally, in that regard, Mr. Chairman, there was, while we were in El Salvador and I guess the week previous, there was an interview with Fidel Castro in La Prensa on Janu-

ary 9 in Nicaragua. A statement where he admitted that they could not win militarily in El Salvador; they would have to win it through the negotiating process.

With regard to this determination on the part of Castro to weaken our resolve and commitment to a good neighbor, he pointed to the role, frankly, of Congress and the U.S. media as offering resistance to the administration's determination to help that country. It is no accident, therefore, that the guerrillas have launched their current offensive to coincide with the congressional certification requirement, just as they launched an offensive to disrupt the March 1981 Salvadoran elections.

The Communists are abusing the commendable congressional effort to reduce violence. They are accelerating their murderous efforts, precisely now at certification time, to persuade us, in Castro's words, that we are losing. They are trying to place the Salvadoran people in harm's way to draw government fire on them, and to complain of human rights abuse.

If the United States maintains a firm commitment to the principle that the Western Hemisphere is off limits to the Soviet Union and if we build upon the Caribbean Basin Initiative and demonstrate and acknowledge that our neighbors to the south are a matter of concern and interest to us, we will be able to build strong friendships in an alliance that can guarantee the security of our hemisphere, promote a better life for millions and advance the cause of free institutions at the same time.

That concludes my statement, Mr. Chairman.

[Representative Crane's prepared statement follows:]

PREPARED STATEMENT OF HON. PHILIP M. CRANE

Thank you for providing this opportunity to testify before your Committee on the vital subject of El Salvador.

Just over 2 weeks past I had the opportunity to visit El Salvador for the first time. Prior to this my knowledge of the country was based upon research and second-hand accounts from people who had been in the country.

It has not been my practice to travel abroad at taxpayer expense and I did not on this occasion. However, in response to critics of so-called congressional "junkets," I have defended much travel by Members as important to developing insights and understandings upon which they must render judgments over the expenditure of billions of dollars of taxpayers' money.

El Salvador is a case in point. I would hope that every Member of any Congressional Committee that has any jurisdiction over the expenditure of taxpayer dollars in El Salvador would visit this beleaguered country in person.

The first thing that impresses a new visitor is how close it is to our borders. San Salvador, for example is closer to Miami, Florida than Miami is to Washington, D.C. The Salvadorans are indeed neighbors who live just down the block and yet I suspect the average American would be hard pressed to find their nation on a map.

Second, it is a small country in geographic size—roughly equivalent to the State of Massachusetts. Its landscape contains volcanic mountains in profusion and yet it is rich in agricultural land and has the capability of feeding its population with ease. Not only can El Salvador produce food surpluses, it used to be a significant exporter of cotton, sugar, and coffee.

I say "used to be" because not only have these products faced depressed world markets, but the Communist guerrillas have concentrated great efforts to destroying the economic infrastructure of El Salvador. The attacks, in too many instances, have been successful.

Yet, despite an ongoing costly effort to root out the guerrillas, despite depressed markets for their major exports, despite the crushing burden of 250,000 displaced citizens who are casualties of this conflict, and despite the loss of their produc-

tive labors in the fields, one cannot accuse El Salvador of the degree of irresponsibility that has brought so many Third World countries to the brink of economic collapse. Red ink spending tends to be the normal cause of economic chaos. They have neither defaulted nor repudiated loans in spite of all these adversities.

While my visit to El Salvador was compressed into 4 days, they were long and productive days. I had the opportunity to receive briefings from President Magaña; Major D'Aubuisson, head of the Constituent Assembly; General Garcia, the Defense Minister; U.S. Ambassador Hinton; and Col. John Waghelstein, who heads the U.S. military advisors.

I met with business leaders, union leaders, military leaders in the provinces, clergy, political leaders representing various parties, managers of displaced persons programs, and our own embassy people and military advisors. I also had ample opportunity to talk with the populace at large, including a guerrilla defector and patriotic mothers.

In anticipation of recertification, you are already aware of the statistical progress El Salvador has made in the human rights category as well as in the development of democratic institutions. No one can suggest that that progress is as great as we would like, but it is important to keep the problems in perspective. While we have had almost four centuries of experience in democratic institutions, they are in their infancy in El Salvador. For all of that, Americans have never faced going to the polls with death threats directed at them for participating in the process. But that is exactly what happened in El Salvador during their national elections last year. And despite these threats from the Communist guerrillas, over 80 percent of the people voted, which is a participation level that should shame us.

The single item that impressed me most in conversation with Salvadorans was the universality of commitment from every sector of their society to the preservation of the democratic process. The labor union leaders boasted that they were responsible for getting a half million votes out themselves. From no individual did I hear either sympathy for the Communist guerrillas nor an interest in negotiating with them, unless they were willing to lay down their arms and work within the democratic process.

In fact, while I was there the suggestion that the Government of El Salvador should negotiate with the guerrillas triggered a large and vocal protest demonstration in downtown San Salvador.

On the military side, I traveled by helicopter from San Salvador to La Union, which is separated from Nicaragua by the Gulf of Fonseca. The military base located there is used by the Salvadoran Navy. Thanks to U.S. advisors and some modest upgrading of Salvadoran equipment, the navy has been able to reduce greatly the flow of arms and supplies from Nicaragua into El Salvador by sea.

Since the land routes between Nicaragua and El Salvador are ruggedly mountainous, and the Government of Honduras has worked to interdict land supplies, land routes do not provide an easy avenue for the Sandinistas to resupply the guerrillas. But the Salvadorans are helpless when it comes to interdicting the ongoing resupply by air. The naval commander at La Union informed me that the previous week there were four daytime flights into El Salvador in a single day. And there are literally hundreds of little airstrips on the cotton and sugar farms between San Salvador and La Union and it is impossible for the Salvadoran military to police that entire region.

Moreover, the Salvadorans have no adequate radar to monitor these incursions from Nicaragua nor appropriate planes, missiles or anti-aircraft guns to knock them down. The military is further handicapped by a lack of spare parts and they need far more trained mechanics. One of our helicopter blades cracked on the flight to La Union, presumably from wear, and one estimate I heard fixed the down time of that helicopter at a week before the blade could be replaced and balanced. Considering the fact that they only have about 19 helicopters of varying vintage, this was a serious loss.

Another area where the United States could significantly contribute to the Salvadoran capability is in the area of training their personnel in unconventional warfare. Most of their military leaders do not appear conversant with the most effective ways of coping with a guerrilla conflict. Salvadoran forces trained in unconventional warfare tactics of small unit maneuver and resupply could be much more effective against the guerrillas with less loss of life and resources.

Another ingredient of more effective prosecution of the military conflict would be creation of an amnesty program. A former guerrilla informed me that at the

present time it is not easy for a guerrilla to surrender. Such a program, however, requires funding. An effective amnesty program involves paying defectors for the arms they bring in when they surrender.

Finally, there is the problem of the refugees. The government, already financially strapped, lacks the resources to care for them. Church groups and international assistance groups should be given greater assistance in providing for the refugees. Since the country is capable of producing food surpluses, it might be doubly helpful to El Salvador if food were purchased for the refugees from Salvadoran farms.

El Salvador must be spared the fate of Nicaragua and Cuba. The United States, as leader of the free world, has a unique responsibility in the world to provide leadership and assistance on behalf of personal liberty, free institutions, economic progress, and security. This responsibility, like charity, must manifest itself—of all places—at home. Home, in this instance is our own hemisphere.

If the United States were to refuse to provide the modest assistance to El Salvador that is essential to guarantee its independence and freedom, it would be a message to Cuba and the Soviet Union that Communist subversion can be further pressed. We witnessed the arrival of an estimated 1 million illegal Mexicans in the United States last year. Some estimates calculate the number of Salvadorans in the United States at the present time to be 300,000.

Gentlemen, this is the earnest of a deluge from all of Central America and Mexico if we don't take decisive and prompt action to help those democratic forces on our doorstep who are trying to prevent Communist subversion and terrorism from succeeding. And the economic impact here of such a flood of illegal immigrants fleeing tyranny is incalculable.

President Reagan's Caribbean Basin Initiative, which is a very popular policy in El Salvador and throughout the Basin, is one of the most positive expressions of interest in our Latin neighbors since World War II. But there are other types of support—such as that which we are already providing to El Salvador—that are dictated whenever any country experiences terrorism supplied and fomented from abroad.

Let us make no mistake. The Soviet Union and Cuba sense opportunity in this Hemisphere and they are seeking to exploit it. Since 1978, Cuba has been given arms capable of projecting power beyond the island's periphery. The Straits of Florida—through which more than 50 percent of men and material for NATO contingencies flow (including virtually all the petroleum)—is now under the gun of Cuban operated Soviet MIG-23's. Foxtrot-class submarines, and a Koni-class frigate. A runway is being built on Grenada which will allow Cuba to support its troops in Africa. Suriname's Colonel Bouterse, with Cuban tutelage, has decapitated potential opposition—murdering 15 outstanding labor, newspaper, and student leaders and arresting others. Grenada and Suriname command the Atlantic narrows through which two-thirds of Western Europe's oil flows and through which our Pacific aircraft carriers would have to transit in time of war or crisis.

Our enemies are clever. They are exploiting our own democratic system to try to neutralize us. Castro told Colombian radio CARACOL in early January, and I quote, "I think they (the United States) must first persuade themselves they are losing the war; that they are losing their land." In this regard, Castro pointed to the role of Congress and the U.S. media as offering "resistance" to Administration policy. It is no accident, therefore, that the guerrillas have launched their current offensive to coincide with the Congressional certification requirement—just as they launched an offensive to disrupt the March 1981 Salvadoran elections.

The Communists are abusing the commendable Congressional effort to reduce violence. They are accelerating their murderous efforts precisely now—at certification time—to persuade us, in Castro's words, that we are "losing." They are trying to place the Salvadoran people in harm's way—to draw government fire on them and then to complain of human rights abuse.

If the United States maintains a firm commitment to the principle that the Western hemisphere is off limits to the Soviet Union and if we build upon CRI and demonstrate an acknowledgement that our neighbors to the south are a matter of concern and interest to us, we will be able to build strong friendships in an alliance that can guarantee the security of our hemisphere, promote a better life for millions, and advance the cause of free institutions at the same time.

The CHAIRMAN. Thank you very much, and I want to say that your trip down there was a valuable one and can well be justified. I do not think anyone would think of going on a trip to El Salvador at this particular time as a pleasure trip, and you did work hard down there.

I would appreciate, because you have talked with the top leadership in the country, your assessment as to whether that leadership, both political and military, executive and legislative, are actually committed to the reforms that they have said to us are the goals and objectives of their Government.

Representative CRANE. I would say in response, Mr. Chairman, I think they are, with varying degrees of enthusiasm. Within the business community—and they, of course, have representation in the political parties—there is less enthusiasm and less conviction that some of the land reform, in fact, can achieve its objectives.

And one of the arguments I heard advanced by at least one businessman was that this was a rather curious emphasis on our part, when we started in our early history with 90 percent of our people engaged in agriculture and we are down to about 3 percent of our people now that own the farms and produce the food in this country. And we have achieved great economies of scale.

And by contrast, in that country where there was a demonstrable productive capability on some of the larger farms, now this effort to break this up while salutary in providing individual land ownership and the price that goes with that, is not necessarily economically in the best interest of continuing to maintain large-scale production.

But I would say, in answer to your question, yes, there is an acceptance. I found an acceptance. Let me put it that way. Even on those who grudgingly accepted it, as apparently one of the inevitable parts of the development of El Salvador and most especially, El Salvador's progress in moving forward in implementing democratic institutions and changing its entire lifestyle.

But some of the labor union leaders, for example, were concerned that this program is not moving as far as they feel it should.

The CHAIRMAN. In your testimony, you mentioned that an ingredient of an effective program for prosecuting the military conflict is the creation of an amnesty program. Do you believe the Assembly will be able to agree upon a meaningful amnesty?

Representative CRANE. I am not sure that they can. I attempted to convey to every representative of the political parties as well as members of the business community, as well as the military leaders, that an amnesty program is capable of working. And one of the responses I heard was well, we need the funds, we are short of funds to implement such a program.

I do not think they appreciate yet how important it is. One of the things I did hear, however, is that the guerrillas have started, in effect, their own amnesty program and capturing members of the military in remote outposts instead of killing them; simply taking their arms and turning them loose.

So I think that it is an area that we ought to pursue more aggressively in impressing upon their leadership in that country the advisability and importance of it. I think it is a vital ingredient of finally resolving the fighting, at least bringing it down to a scale that

is manageable, that is not going to be disruptive of the economic base of that country.

The CHAIRMAN. While in El Salvador, you mentioned meeting with a number of leaders. I did not recall whether you indicated that you had met with the leftist leaders as well as the moderate and right wing.

Representative CRANE. No, sir, I did not. And I am assuming when you say the leftist leaders you are talking about those who are working within the democratic process.

The CHAIRMAN. Yes.

Representative CRANE. I did not. I met with probably as left as Christian Democrats and I am sure that there were other representatives of leftist parties there that would have a different—

The CHAIRMAN. They would be to the left of center. Did they express you to concerns that we have learned of that they are really concerned for their own physical safety, particularly after what has happened in the last few days in any open political campaign?

Representative CRANE. I think everyone in the country is concerned about his physical safety. One person down there told me that this is a very cordial country because everyone is packing heat. So when you go down the streets of San Salvador, it is a little jarring to see civilians walking with automatic weapons or shotguns or packing sidearms. Everyone home is protected, not just with walls but with armed guards.

It is a country that is, in fact, under seige. And I think, as everyone is aware, the attacks on individuals down there have come from both extremes. And as a result, it is considered essential that a person protect himself by carrying arms that way. But you see them all over the city. It is unnerving.

The CHAIRMAN. Some members of the committee that are knowledgeable have lived in Latin America, such as Senator Dodd, and have been frequently pressing to have a dialog between all political factions including the left, leading to negotiations. Could you give us an indication as to whether the political leaders in El Salvador distinguish between an agenda for dialog and actual negotiations with, say, the left?

Representative CRANE. Well, if you are talking again about the left that is working within the Democratic process, I do not know the degree to which there is ongoing discussion amongst that element. But what I encountered was very profound resistance, and as I say, this was all from the quarters I spoke to, including the clergy that I did speak to.

Now, I know some of the clergy down there have told about, I think, of 348 clergymen in the country, 45 are sympathetic to the guerrillas. I did not talk to any of those 45.

But in talking to the labor union people, too, there was a firm conviction that you cannot negotiate with the guerrillas until they lay their arms down and are willing to work within the Democratic process. And I then said well, one of the stumbling blocks to implementation of that, it seems, is the failure to have an amnesty program.

And I think it is, as I indicated, talking to one defector who defected 2 years ago, he said it is a very serious problem if you want to lay down your arms and reintegrate. And unfortunately, I think the con-

frontation that exists there is not going to be ameliorated until they pursue that avenue.

But I do not think there is strong sentiment in that country, and as I indicated, I was leaning more heavily on input from the labor union leaders, and especially from agricultural labor union leaders who have direct contact with the campesinos. If there was a feeling that that was the path to go, I figured you would hear it expressed more from them, and they said there is still no determination to do so.

That is not to say that that situation could not deteriorate. There is a sense of frustration that some of the labor unions have over what they feel to be a betrayal on the part of some of the political parties who made extensive promises to them and they claimed responsibility for getting a half a million votes out in that election. But a betrayal in terms of a failure to incorporate some of those people into the new government.

And I told them that that is not unusual; even in our country, sometimes politicians make promises they do not fulfill. But I did try and stress to some of their political leadership and some of the business community that it seemed to me a healthy and desirable thing to try to incorporate those people.

The CHAIRMAN. I yield back the balance of my time so that we can move along toward the administration witnesses as soon as possible. Senator Pell?

Senator PELL. Thank you, Mr. Chairman. I, too, was in El Salvador but about a year ago. I came away with a somewhat different impression than you did. I think the thing that struck me the most was on my way back to the airport, the casual way we passed two corpses in the street. In one case, no one was surrounding the corpse, and in the other case there was a group that seemed concerned. I felt that I had rarely seen that degree of violence that was accepted as the norm there.

I have one particular question and that is, you have made a case for more military assistance. Do you believe that the solution there can be achieved through military means, or do you believe it has to be done eventually through political means?

Representative CRANE. Well, I think, Senator, that you always have a criminal element in any society that will constantly be waging war against established order. So there is never, in that sense, any ultimate resolution of that. You will have people shooting at one another, as we have here in the United States.

But I do feel that a more effective prosecution of that by exploiting means of waging unconventional warfare can contain the guerrilla activity to such a degree that it will create a powerful incentive for them to think in terms of working within the democratic process, rather than waging an ongoing, fruitless military campaign.

And I think further that in containing them in relatively harmless areas where they cannot create the problems they have created thus far in displacing people, getting them off the farms, denying them the opportunity to work the farms, I think that can be achieved. Yes, indeed.

Senator PELL. I thank you for your comment. I do not agree, but I wish you well. Thank you.

Representative CRANE. Thank you, Senator.

The CHAIRMAN. Thank you. Senator Kassebaum.

Senator KASSEBAUM. I do not have any questions, thank you.

The CHAIRMAN. Senator Dodd.

Senator DODD. I have no questions.

The CHAIRMAN. Thank you very much. Congressman Crane, just one last question. In summation, when you left there, did you have the feeling that taking into account winning the war is psychological, military, implementation of reforms, et cetera, that winning a peace down there and stability is possible? That we are moving in that direction? Or did you leave very discouraged?

Representative CRANE. I left there encouraged, but I will say this: In talking to the labor union leaders, they indicated that in no way had the guerrillas been successful in capturing the hearts and minds most especially of the farmworkers. But on the other hand, they feel that the situation cannot continue indefinitely without more participation by the labor union leaders in the political process if they are going to retain the loyalties of those people to the government. Which was one of the reasons I attempted—I placed great stress on bringing those union leaders into active participation in one of the political parties, or ideally, several of the political parties.

I think that is a concept that has not been considered by certainly some of the major business interests down there, and traditionally I do not think it was considered by probably the ruling oligarchy of that country.

But as I say, they are experimenting and making tentative movements in developing the understandings of the democratic process, and coalitions are a part of that process. And so, I frankly think that again, with more input from some of our people, and again, I would urge all the members of the relevant committees to go down there and convey that same message. Ambassador Hinton told me, when I attempted to indicate at a dinner we had with some of the most influential business leaders and was impressing upon them the importance of this, he told me privately afterward he thought that had a salutary effect.

So I think messages like that from people here in our country who have had much more experience with the democratic process would be beneficial. But I am optimistic that they will make it, Senator.

The CHAIRMAN. Thank you very kindly. We appreciate your being with us.

The Chair will now call on the distinguished administration witnesses: Assistant Secretary Thomas Enders, Assistant Secretary Elliott Abrams, Mr. Sanchez, and General Nutting.

The CHAIRMAN. Secretary Enders, we would be pleased to have you lead off.

STATEMENT OF HON. THOMAS O. ENDERS, ASSISTANT SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS, DEPARTMENT OF STATE

Ambassador ENDERS. Thank you very much, Mr. Chairman.

The Congress authorized military assistance to El Salvador, what we are considering here today, because the survival of that country is important to American security. What happens in the civil strife there can affect the future of the Panama Canal, it can affect the

future of our immediate neighbor Mexico, and I think we are all mindful of the fact that half of our commerce passes through the Caribbean and can also be affected.

In granting military assistance, you conditioned it on periodic certification on progress in human rights, land reform, and creation of democratic institutions.

Mr. Chairman, you asked a moment ago for assessments of the certification process, and I think one could argue about the procedure. It has had some side effects. Those of us who work on certifications at the other end of the avenue have found that we are not very comfortable by having to say every 180 days either that it is OK or that it is not OK and not having a third choice.

I think it is apparent that periodic certifications can have the effect of polarizing opinion here, perhaps obscuring a broad agreement that we do not want to see Central America dominated by Marxist-Leninists, but we do want to see it reform. Or they can threaten the morale of our friends in the area who fear that aid will suddenly be cut off. Or they can give an opportunity to the guerrillas who have found that a certification offensive is a natural medium for publicizing themselves. And I think we have seen a striking example of this this week.

It is also clear that such major factors as the Cuban-Nicaraguan support for guerrilla forces are left out altogether. But clearly, Congress intended to give the administration in certification a means to encourage and insure progress toward human rights, land reform, and democracy, and we have attempted to use it that way.

And no one can argue at all about the goals. Only through the emergence of legitimate institutions which all the factions can participate will the civil strife in El Salvador be overcome. Only when the political violence, including that of the government forces, has finally been ended, can representative institutions be fully effective. And only when the process of redistributing land whose ownership was once clearly unequal has been completed will there be social justice.

Now, this third certification does not say that these goals have been achieved. It does say that El Salvador continues to advance toward them. It says that the "land to the tiller" phase of agrarian reform whose future was debated in this committee room so intensively at the time of the last certification has been vigorously relaunched. This shows that in the course of the period since the election of a constituent assembly that there has indeed been a substantial reinvigoration of the land reform, where, of course, the acreage showing particularly sharp increases.

But the thing I would focus on, Mr. Chairman, is the increase in petitions, the start of the process. There has been a very vigorous relaunching of that. There are no less than in the course of the 6 months 9,638 farmers who have filed applications. And if you include family members, as we have earlier in the statistics, you are talking about a potential of 60,000 new beneficiaries from the "land to the tiller" program as these title applications go through the process.

Certification says that political violence continues to diminish, although at a slower rate than at the time of the second certification. This shows the Embassy figures that have been collected over the period. They have been collected on the same basis.

You will recall that there have been arguments about whether this is all political violence and deaths caused by political violence. I think that it clearly is not. But the figures are consistent on the same basis. And if in fact you remove deaths caused by military action, they track very closely now with those collected by other organizations.

What this shows, Mr. Chairman, is that the anarchy that characterized El Salvador 2½ years ago is gradually abating. It is abating because the government is gradually achieving control over all elements of its forces. It is also abating because the government has been relatively successful in pacifying the cities and areas around the cities. And the insurgency has largely affected 4 out of the 14 departments least populated?

The certification also says that the fragile new democracy that emerged from the massive turnout in the March elections has proved resistant to manipulation of individuals or minorities. The country is headed toward full Presidential elections a year from now, as the timetable laid out for the development of a constitution, development of political participation, and laws. And we expect that to go ahead. Little by little, democratic institutions are emerging.

And there are very serious problems. You mentioned some of them in your opening remarks. The judicial system is simply not working. Often, soldiers disciplined and turned over to it remain in detention without being prosecuted. One alleged participant in the murder of the two American land reform workers, a man whose probable guilt was established by a government-appointed and army-supported commission of inquiry, was set free by judges that we believe were intimidated or bought. And two more are being detained and prosecuted, and yet another is a fugitive.

A trial process has begun, as we expected it to begin, of the accused murderers of the four American churchwomen. But all of us are waiting for a verdict.

Moreover, and I would put particular emphasis on this, dissenting views in the coalition have so far prevented the government from going forward with two initiatives that are essential to moderate the conflict; a serious amnesty—and we just discussed that; and the peace commission to promote reconciliation with adversaries.

The whole concept here is one of developing political institutions in which political competition can be substituted for competition through violence. Members of the right in that country have participated in this. It is essential that members of the left also find a way so that they can be brought back into the system.

Mr. Chairman, a couple of remarks, if I could, about views that are pressed on us. Some people say to us, stop the military aid to El Salvador and the killing will end. But it will not. Cessation of the military aid would only mean that the fighting, which is now concentrated in 4 departments, would spread to 14, and the death squads and vigilantes that have gradually been brought under control will flourish again as the central government falters.

Others say we should force the government to negotiate with its adversaries and that will stop the killing. But it will not. No Latin American government has ever agreed to negotiate as an equal with its armed opposition and survived. Venezuela did not agree to do so

in the 1960's. Nor did Peru or Brazil. Colombia did not this year, and it has had a long and serious insurgency.

El Salvador is not like the pre-Fidelista Cuba or the pre-Sandinista Nicaragua. If we did attempt to force the Government of El Salvador to negotiate with the guerrillas as equal, we would risk its collapse, and the result could be anarchy as left, center, and right all fight for the remains. I think it is quite clear also that should in either case the guerrillas prevail, we know there will be no democracy, no respect for human rights, and no land to the individual tiller.

Mr. Chairman, I would hope that, as a result of this hearing, that there could be a message to El Salvador. I think it should be that we expect the land reform to be continued when the law authorizing it comes up for renewal this spring; that if civil justice cannot be made to work in an emergency, and clearly it is not working now, that courts of military justice be set up and used to punish those members of the security forces who are found guilty of abuses; and that the long, hard work of reconciliation must begin now with the peace commission and with amnesty; that we expect the alleged murderers of our countrywomen and countrymen to be judged and, if found guilty, to be punished; and that the survival of El Salvador is important to us, that we will support a country which reforms itself and resists enemies; that we know will not support democracy or human rights or the distribution of land to the farmer who tills it.

Thank you.

[Mr. Enders' prepared statement follows:]

PREPARED STATEMENT OF HON. THOMAS O. ENDERS

The Congress has authorized military assistance to El Salvador because the survival of that country is important to American security. The outcome of civil strife there can affect the future of the Panama Canal, and of our immediate neighbor Mexico. And we are mindful that no less than one half of our trade passes through the Caribbean.

The Congress has also conditioned military assistance to El Salvador on periodic certification of progress in human rights, land reform and the creation of democratic institutions.

One could argue about the procedure adopted. Many of us don't feel comfortable with having to say it's OK—or not OK—every 180 days with no third choice. Periodic certifications can polarize opinion here, obscuring a broad agreement that we don't want to see Central America dominated by Marxist-Leninists, but do want to see it reform. Or they can threaten the morale of our friends in the area, who fear that aid may be suddenly withheld. Or they can give an opportunity to the guerrillas, who have found that a "certification offensive" is a natural medium for publicizing themselves. And such major factors as Cuban/Nicaraguan support for guerrilla forces are left out altogether.

But Congress clearly intended to give the Administration in certification a means to encourage and ensure progress toward human rights, land reform and democracy.

And no one can argue about the goals.

Only through the emergence of legitimate institutions, in which all factions can participate, will the civil strife in El Salvador be overcome.

Only when political violence, including that of government forces, has finally been ended, can representative institutions be fully effective.

And only when the process of redistributing land, whose ownership was once cruelly unequal, has been completed will there be social justice.

This third certification does not say that these goals have been achieved.

It says that El Salvador continues to advance toward them.

The certification says that the "land to the tiller" phase of agrarian reform—whose future was a matter of such concern at the time of the last certification—has been vigorously relaunched. Look at this chart. No less than 9,638 farmers

filed title applications in the second half of 1982. If you include family members, that means some 60,000 new beneficiaries of land reform once the applications are processed. More than 20 percent of arable land has been redistributed since U.S. aid to El Salvador began 3 years ago.

The certification says that political violence continues to diminish although at a slower rate than at the time of the second certification. When a group of reforming officers overturned the old order in El Salvador in 1979, an explosion of violence by right and left occurred—anarchy really, in which every man could inform on every other, and in which security forces, vigilantes, guerrilleros all took justice into their own hands. This anarchy has gradually abated, as the government has instructed its forces in human rights concerns and extended its range of control. Look at the chart. Political violence is only a quarter of what it was 2 years ago.

The certification says that the fragile new democracy that emerged from the war in the massive turnout of the March elections has proved resistant to the manipulation of individuals or minorities. The country is headed toward full presidential elections a year from now on the basis of a new constitution. Democracy is little by little emerging.

Grave problems remain. The judicial system is not working. Often soldiers disciplined and turned over to it simply remain in detention without being prosecuted. One alleged participant in the murder of two American land reform workers—a man whose probable guilt was established by a government-appointed and army-supported commission of inquiry—was set free by judges intimidated or bought. And although two more are detained and being prosecuted, yet another is a fugitive. A trial process has begun for the accused murderers of four American churchwomen. But all of us are still waiting for justice to be done.

Moreover dissenting views in the coalition have so far prevented the government from going forward with two initiatives that are essential to moderate the conflict: a serious amnesty, and the Peace Commission to promote reconciliation with adversaries.

Some people say: stop the military aid to El Salvador, and the killing will stop.

But it wouldn't. Cessation of military aid would mean only that the fighting—new concentrated in four departments, three of them lightly populated—would spread to all frontiers. And the death squads and vigilantes would once again flourish as the central government faltered.

Others say: force the government to negotiate with its adversaries, and the killing will stop.

But it wouldn't. No Latin American government has ever agreed to negotiate as an equal with its armed opposition—and survived. Venezuela didn't agree to do so in the 1960's. Nor did Peru or Brazil. Colombia didn't this year. And El Salvador is not pre-Fidelista Cuba or pre-Sandinista Nicaragua. If we attempt to force the Government of El Salvador to negotiate with the guerrillas as equals, we risk its collapse. And the result could be anarchy as left, center and right all fight for the remains.

And should in either case the guerrillas prevail, we know there will be no democracy, no respect for human rights, no land to the individual tiller.

If power sharing without reference to democratic principles is no solution, what is? The answer is inescapable: the cooperative development of political processes that are democratic and that provide the security as well as the means for reconciliation.

And not in El Salvador alone. For just as the fighting has become a regional problem, the solution must be regional as well. And our objective must be to foster conditions, both political and military, that will bring lasting peace to Central America.

Last October, the government of Costa Rica helped define a set of principles we believe can help achieve that goal. Both El Salvador and the United States signed the Final Act of San Jose setting forth eight principles, which single out respect for human rights and the development of democracy, and which also include reciprocal measures to reduce and eliminate military conflicts.

These principles embody four basic points:

- (1) taking Central America out of East-West competition, through such measures as removal of foreign troops and military advisers;
- (2) defusing tensions among nations in Central America, by reciprocal and verifiable agreements on arms imports, frontier control, and assistance to insurgent groups in each other's territory;

(3) launching a region-wide democratic transformation, by ensuring that all citizens who organize politically can have a voice in determining the future of their country; and

(4) strengthening the economies, by reactivating the Central American Common Market and implementing the economic initiatives of neighboring countries, including our own Caribbean Basin Initiative.

Together these four points represent what we are aiming at in Central America. For El Salvador, the fourth certification period is now starting. I hope that the message from this hearing will be:

That we expect land reform to be continued when the law authorizing it comes up for renewal this spring;

That if civil justice cannot be made to work in an emergency, courts of military justice should be set up and used to punish those members of the security forces who are found guilty of abuses;

That the long hard work of reconciliation must begin now, with the Peace Commission and amnesty;

That we expect the alleged murderers of our country-women and country-men to be judged and, if found guilty, punished;

That the survival of El Salvador is important to us, and that we will support a country which reforms itself to resist enemies who we know will not support democracy, or human rights, or the distribution of land to the farmer who tills it.

REPORT ON THE SITUATION IN EL SALVADOR
WITH RESPECT TO THE SUBJECTS COVERED
IN SECTION 728(d) OF THE
INTERNATIONAL SECURITY
AND DEVELOPMENT
COOPERATION ACT
OF 1981
P.L. 97-113
JANUARY 21, 1983

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INTRODUCTION

Section 728 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113, approved December 29, 1981) establishes a framework for U.S. assistance to El Salvador. This statutory framework is premised on a Congressional finding, set out in section 728(a)(1) as follows:

The Congress finds that peaceful and democratic development in Central America is in the interest of the United States and of the community of American States generally, that the recent civil strife in El Salvador has caused great human suffering and disruption to the economy of that country, and that substantial assistance to El Salvador is necessary to help alleviate that suffering and to promote economic recovery within a peaceful and democratic process. Moreover, the Congress recognizes that the efforts of the Government of El Salvador to achieve these goals are affected by the activities of forces beyond its control.

In order to assure that U.S. assistance to El Salvador remains consistent with the foregoing policies, section 728(d) requires periodic certification to the Congress, at six-month intervals beginning in January 1982, that the Government of El Salvador --

- (1) is making a concerted and significant effort to comply with internationally recognized human rights;
- (2) is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces;
- (3) is making continued progress in implementing essential economic and political reforms, including the land reform program;
- (4) is committed to the holding of free elections at an early date and to that end has demonstrated its good faith efforts to begin discussions with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict, with such solution to involve a commitment to:

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(A) a renouncement of further military or paramilitary activity; and

(B) the electoral process with internationally recognized observers.

This report, which constitutes the basis for the third such certification since section 728 was enacted, addresses how these criteria are being met and discusses the related issues of the murders and disappearances of U.S. citizens in El Salvador.

Its conclusion is that, despite great obstacles, many still beyond its immediate control, the Government of El Salvador has made progress under each of the criteria specified in the law. In particular, over the last six months:

- Political violence continued to diminish -- although at a slower rate than at the time of the previous certification -- in part due to increased consciousness by the government of the importance of more effective action on human rights, including formation of new institutions for this purpose.
- Efforts to control abuses by members of the armed forces were the subject of increased attention by the Government of El Salvador and continued to show slow progress.
- The "land to the tiller" phase of agrarian reform -- whose future had been a matter of concern at the time of the last certification -- was vigorously re-launched, while consolidation of Phase I of the land reform continued.
- The democratic process rooted in the March 1982 Constituent Assembly elections proved resistant to minority or individual efforts at manipulation.

No major reverses were registered in the commitment of the Government of El Salvador to the criteria of certification. In addition, on October 4, 1982, El Salvador joined formally with seven democratic American states in committing itself in the Final Act of San Jose, Costa Rica, to a negotiating process on regional democratization, demilitarization, and defense of human rights.

It is nonetheless clear, and this report documents, that human rights abuses continue and that the further development of democracy and the protection of human rights are not to be taken for granted. Two areas of particular concern are the systematic ineffectiveness of El Salvador's criminal justice

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procedures, particularly in cases originating in political violence, and the need for further improvement in military discipline, which must be strengthened within individual security force units on a nation-wide basis.

These concerns emphasize the gravity of El Salvador's problems. The country faces an organized and externally-supported guerrilla war that has provoked an acute economic decline. The many divisions within Salvadoran society have been aggravated by ingrained historical reliance on force to "deal" with social disputes. During the past year, the guerrilla war has been confined primarily to the eastern third of the country, the most intense conflicts taking place outside major population and production centers. Even so, civilian casualties remained high, the Salvadoran armed forces lost 1,145 men killed and 2,398 wounded in action during 1982, and guerrilla sabotage against the economy imposed a heavy toll in unemployment, displacement and human suffering.

Despite the inadequacies identified in this report, important progress toward the objective of peaceful and democratic development has been attained during the three years of active U.S. assistance to El Salvador. More than 20 percent of all El Salvador's farmland has been redistributed to 65,000 poor farmworkers and their families. Civilian deaths attributable to political violence from all sides have fallen from as high as 800 a month in late 1980 to no higher than 200 a month in the last six months of 1982. Shortcomings in internal military discipline are slowly being countered by human rights training, improved communication, and command directives that emphasize respect for noncombatants. Representative institutions, created through direct and universal adult suffrage, are guiding the drafting of a modern constitution and preparations for presidential elections in 1984.

II. HUMAN RIGHTS

Human rights abuses by all sides to the conflict continued during this reporting period, but progress was noted in some important areas. Although institutional progress remains slow, President Magana is preparing an amnesty bill for guerrillas willing to lay down their arms, and a government Human Rights Commission was installed to examine human rights problems. Civilian deaths attributed to political violence declined significantly, while disappearances continued at about the same rate. The criminal justice system remains flawed, but there was increased awareness in the Government of National Unity of the need to reform the judicial system.

Further institutionalization will be necessary for continued human rights progress. On December 2, Salvadoran President Alvaro Magana installed the new Human Rights Commission, a step toward realization of the as yet largely unfulfilled institutional potential of the multi-party Pact of Apaneca (Appendix A: Basic Platform of Government, "Pact of Apaneca"). The Commission will attempt, in his words, "to achieve the full enforcement of the inalienable rights of the individual in the most complete sense and to render the state the effective guarantor not only of the individual's physical safety but of his full development as well." The Commission will examine the range of problems and issues associated with continuing violence and human rights violations, and make recommendations directly to the President on how to reduce abuses (Appendix B: President Magana's Address on the Human Rights Commission and List of Members).

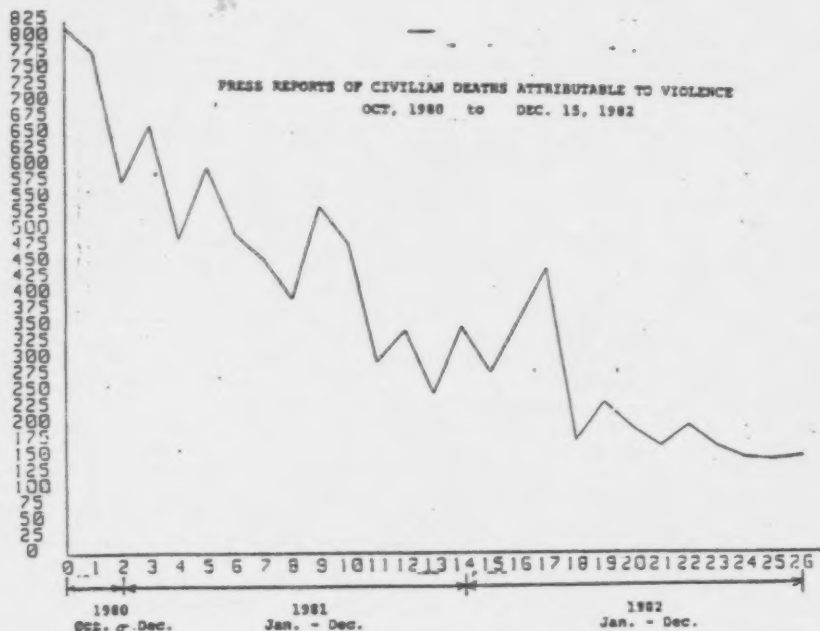
The Commission is composed of seven members, including senior representatives of the Catholic Church, the security forces, the private sector, and a campesino/labor coalition. The diverse backgrounds of the private representatives and the political independence of the public members should encourage independent judgments based on factual information, thereby stimulating further human rights progress. The Commission is currently receiving reports of disappearances. Of 32 cases received during its first week of operation, five were resolved with the cooperation of the security forces.

Under the provisions of the Pact of Apaneca, a Peace Commission is also to be formed, charged with preparation of an effective amnesty program for those within the armed left willing to eschew violence, and with handling other questions of national reconciliation. President Magana himself is preparing a proposal for amnesty, which the Peace Commission would review. He is proceeding carefully to build a political consensus on the conditions of the amnesty. In the meantime, the armed forces have granted safe conduct passes, have

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helped to resettle, about 200 ex-guerrillas and supporters who have turned themselves in under an informal amnesty program. Others remain under military protection to secure them from reprisals.

Civilian deaths attributed to political violence did not exceed 200 per month in the past six months, according to Salvadoran press reports. This continues the downward trend first identified in the second half of 1981, when the reported number of civilian deaths attributed to political violence averaged about 500 per month. Data from the Salvadoran human rights groups also reflects this downward trend, although there are differences in reporting methodologies. (See Appendix C for detailed statistics and interpretation.) This significant decline is due in part to the efforts of the Government of National Unity and the armed forces to reduce violence against noncombatants. But the rate of decline in civilian deaths attributed to political violence has slowed during the past six months.



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As the table below indicates, civilian disappearances continued during the second half of 1982. Prominent among these were the August disappearances of the private El Salvador Human Rights Commission member America Fernanda Perdomo and FDR member Saul Villalta following a press conference to announce an effort at prisoner negotiation by the FDR/FMLN (the leftist political/military coalition); the arrest of 23 ANDES (Teachers Federation) members, of whom 7 were subsequently released and 16 others remanded to prison for trial; and the disappearance of Patricia and Mauricio Cuellar (Section VI).

In some cases where persons thought to be missing had been detained by security forces, as in the case of the FDR members, the government after a brief period acknowledged the detentions in compliance with Decree 507 (see Section V). However, disappearances continue and there is compelling information that elements of the security forces are responsible in many cases. In other cases, rightist and leftist terrorist groups with no known link to the government are believed to be responsible.

CIVILIAN DISAPPEARANCES

MONTH	PRESS REPORTS	UCA	CDHES	ARCHBISHOPRIC COMMISSION OF JUSTICE OF PEACE
JANUARY	44	102	91	-
FEBRUARY	33	86	15	-
MARCH	46	57	23	-
APRIL	52	16	15	-
MAY	23	35	-	68
JUNE	27	52	26	54
JULY	57	67	14	61
AUGUST	54	129	17	82
SEPTEMBER	34	90	15	49
OCTOBER	26	68	31	47
NOVEMBER	36	88	23	54
DECEMBER	25	60	11	37
TOTAL	457	850	281	452
AVERAGE	38	71	26	59

Note: Data on civilian disappearances is subject to the same inaccuracies as that on deaths. Reports for the most part come from urban areas. They are not corrected for errors, releases of detainees, reappearances, etc.

There is growing concern in the Government of National Unity for the revitalization and reform of the criminal justice system. This concern is part of an increased awareness of the critical need to improve the human rights situation. As

Ambassador Hinton stated in his speech to the American Chamber of Commerce in San Salvador on October 29, "Further improvement of the human rights climate largely rests on the ability of moderates within the Government to reconstruct an honest judicial system, free of intimidation." (Appendix D: Text of Ambassador Hinton's Speech). This speech touched off a lively public debate, in which various sectors of Salvadoran society agreed for the most part with the Ambassador's message.

The criminal justice system has not functioned effectively, particularly in prosecuting crimes associated with acts of terrorism from the violent right and left. This phenomenon has been clearly illustrated by the case involving the murder of the AIPLD advisors (Section VI). Trials for political crimes have been rare. The serious problems of the criminal justice system include: the disruptions caused by severe civil strife; acts of terrorism against judicial personnel and facilities; threats and other intimidation; corruption of judges and juries; poorly trained and poorly paid justice officials, especially at lower levels; inadequate police investigations; illegal use of public law enforcement agents for private interests; and rules of evidence and procedures which tend to discourage successful prosecutions. Recent statistics indicate that rates of prosecution and conviction for violent crimes and "crimes against the person" are quite low. Courts prosecuted approximately 300 such cases during the past six months, of which about 20 percent resulted in convictions. Of about 3,650 prisoners in the Salvadoran penal system, (including 809 prisoners held under State of Siege Decree 507) less than 300 have been convicted. The rest are awaiting trial.

Currently 809 individuals arrested under Decree 507 are being held in the Mariona Penitentiary or the Ilopango Women's Prison. The sixteen military tribunals which oversee these cases are under the jurisdiction of the Supreme Court. The Court continues to order the release of Decree 507 detainees, of whom 196 were released in 1982. Several cases also are currently under appeal before the Supreme Court.

During the past six months the government has shown greater concern over the treatment of individuals detained for security reasons. These individuals are held under the provisions of the State of Siege law, Decree 507, which establishes a special legal regime for the investigation and prosecution of crimes against the state (such as rebellion) and associated crimes (such as acts of terrorism). Decree 507 requires the security force to remand the individual to the tribunals or to release him within 15 days. The majority of the several dozen individuals detained monthly are released within the legally prescribed period.

U.S. Embassy officials recently visited the country's two penitentiaries which hold Decree 507 detainees -- Mariona and the women's facility at Ilopango. Both facilities were reported to be clean and well-administered as measured by commonly accepted prison standards both in the U.S. and elsewhere. International Committee of the Red Cross (ICRC) delegates visit and register political detainees and other prisoners in civil prisons and detention centers of the public security forces and military units. These visits take place at least once a month.

Although most of the individuals awaiting trial by tribunal were not captured in combat, but rather in police sweeps of urban areas, recent military operations have resulted in the capture of prisoners. Information on the exact number of prisoners captured in combat is difficult to obtain. Screening and disposition of detainees of all types -- captured guerrillas, their supporters and defectors -- is done at the tactical level, with only sporadic and incomplete reporting to higher headquarters. In many cases, the final disposition of these cases is not reported. Guerrillas who surrender themselves to local military authorities frequently stay within the local military installation for their own protection and are not classified or reported as "prisoners". Similarly, noncombatant supporters of guerrilla forces, even those captured during combat operations, are likewise not classified or reported as "prisoners." They are released and then become part of the displaced persons population within El Salvador (now estimated at about 250,000) or join the thousands of displaced Salvadorans in neighboring countries.

III. CONTROL OF THE ARMED FORCES.

Since the Government of National Unity was formed in August, the planning, coordination and implementation of government policy by civilian leaders and military officers have improved. The physical problems inherent in the deployment of detachments of rural security and military forces to remote areas of the country, with little or no communication with headquarters, and often nebulous command relationships, still impede the high command from closely controlling these forces. There is evidence, however, that the military leadership is making efforts to reduce human rights abuses by the various branches of the Salvadoran military and security forces.

In May 1982, an armed forces announcement exhorted the public to report abuses by commanders and civil defense personnel. Several denunciations followed.

During September 1982, the armed forces conducted a media campaign throughout the country to sensitize military personnel and the general population to the necessity to observe human rights. The Minister of Defense has, on several occasions, delivered strongly worded directives to regular military officers and civil defense commanders, holding them directly accountable for any abuses by their subordinates. On October 7, he met with nearly 200 local defense commanders to deliver a message that they were to remain apolitical and to respect human rights. These local commanders, who are noncommissioned officers, serve as rural military authorities in charge of local defense forces which have undoubtedly been responsible for serious abuses of the civilian population.

Although they have been reduced, excesses by some regular and paramilitary forces continue to occur. There have been at least six major multi-battalion operations since the last certification and yet there have been no substantiated reports of widespread abuses associated with these large scale operations, such as occurred during previous periods. Nevertheless, incidents of smaller scale abuse continue. For example, as reported by the Embassy, and according to several accounts, heavily armed men in uniform entered the La Florida Cooperative in the Department of Santa Ana on the night of November 20. These men rounded up eleven campesinos (four managed to escape) and tortured and killed them, allegedly threatening to return and kill any La Florida residents that were not native to the area. Embassy officers have brought the incident to the attention of the Salvadoran High Command. Reports

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indicate that those who perpetrated this crime were members of the local civil defense contingent; however, there is some question as to whether the incident was politically motivated or the result of a personal vendetta. Allegations of military misconduct by the regular army have arisen in the Department of Usulután. According to information received by the Embassy, soldiers entered the town of Santa Elena on November 22. These soldiers assembled the townfolk in the central plaza and through an informer selected between 12 to 15 young men. These young men were taken away in two olive drab colored vehicles. Their bodies were found along the adjacent highway the next day. Investigations by the High Command of these incidents are underway, and the Embassy will continue to press for further action.

In at least one instance, a military unit believed to be engaged in the violation of human rights was effectively brought under control. The Embassy developed compelling evidence that the Army's Signals Detachment (CITFA) in San Salvador was engaged in what were essentially police activities. Further, the evidence suggested on-going human rights violations by the same unit. The Embassy presented this information to the High Command in September and action was taken. All available evidence suggests that CITFA is no longer in the police business.

In January 1983 a total of 141 regular military personnel were under detention for abuses of authority. Detainees are not punished in military courts, rather they are held under the authority of various civilian courts around the country. Military responsibility ends when the accused is turned over to a civilian court. Prior to this, the military discharges the accused from the service. Therefore, when the accused arrives at the court, he is a civilian.

Sixteen civil defense commanders have been jailed for serious abuses. Thirty-nine civil defense personnel are being detained for abuses of authority in nine of fourteen departments for which we have reports.

Embassy officers have interviewed defectors from the guerrilla rank and file in four departments. All the defectors affirmed they had received good treatment from government authorities. Although there is not yet a formal national amnesty program, the defectors described a resettlement project administered by the military. Local military commanders, to whom these defectors have surrendered, have made efforts to protect them and their family members and, in some cases, to resettle them in other parts of the country. Moreover, the Defense Minister on December 28, during a press conference, urged guerrillas to defect and stated that the military and security forces would guarantee their safety and would allow

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them to return to their homes and places of employment.

Historically, the Salvadoran armed forces have taken few prisoners during counterinsurgency operations. However, this is changing. Written orders for large military operations now routinely contain specific instruction on the humane treatment of civilians and the need to take prisoners. During a combat operation in August, the armed forces reported the capture and humane treatment of some two dozen guerrillas. In a similar operation in Usulután Department in September, the military again took prisoners. More recently, the armed forces took prisoners during combat at the Guazapa Volcano and in the Department of La Unión. A total of 37 prisoners were taken in the last six months, according to reports from field commanders to the Armed Forces General Staff. Frequently, however, guerrilla prisoners are dealt with by local commanders, who may detain them at local barracks, transfer them to refugee camps, or resettle them under armed forces auspices. As a result, reliable information on prisoners captured in combat is not readily available.

The role of the International Committee of the Red Cross continues. The Salvadoran armed forces have reported that 80 percent of about 33,000 active duty personnel in the military and security forces have received human rights instructions from the ICRC.

Although the armed forces have no formal civic action program, many officers in the departments have come to recognize the importance of establishing a close and supportive working relationship with the population. In every department, but especially those where there is conflict, commanders serve on committees with local residents and civil authorities to resolve problems. Some departmental commanders have dedicated a great deal of their time and attention to this, with notable results. Even though portions of those departments border on areas of heavy guerrilla concentrations, the guerrillas have been unable to make inroads where military-civilian cooperation is close. In other parts of the country, units in the field provide services such as medical care, road building, school construction, and well-digging where these would otherwise be unavailable. During the October 1982 floods, the military rescued whole communities and transported food to areas isolated by washed out roads. The military units also work closely with other government agencies to provide assistance to the more than 250,000 persons displaced by the conflict. The armed forces continue to support actively the agrarian reform program, including the reinstallation of peasant beneficiaries who had been evicted by recalcitrant former owners. The armed forces are also actively assisting a new government program to identify and incorporate potential beneficiaries into the "Land to Tiller" agrarian reform. These activities began in the

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first part of 1982 and continued to develop during the second half of the year.

The National Police, the security force with the most prominent urban presence, has undertaken considerable efforts to improve its relations with the public. These efforts include an education campaign in the public schools, public opinion surveys concerning police comportment, and the addition of "public service" instruction to the police training curriculum.

There are also indications of greater strain in relations between the civilian population and the guerrillas. On December 5 guerrillas surrounded a soccer field in San Vicente Department and took 137 civilians captive. One of the captives was killed when he tried to escape. The other 136 young people were taken away at gun point and given political indoctrination. Most of those kidnapped were released within a few days. Less spectacular, yet revealing much about the day-to-day relation of the people to the guerrillas, cases of highway murder, robbery, destruction of private property, and "war tax" extortion ascribed to guerrilla forces abound.

Virtually all military training provided by the U.S. Armed Forces to the Salvadoran military in-country, or in more formal schools out-of-country, includes training in law of war and human rights issues. Classroom instruction provides exposure to U.S. law of war and human rights practices, examples of the application of U.S. military doctrine on the relationship of the military and the civilian population in guerrilla wars, and discussion on how best to incorporate these ideas into the Salvadoran context. Emphasis on human rights instruction during training and the importance of adherence to the code of conduct have begun to have a significant effect on reducing abuses in the field.

Lastly, the recent conflict between the Minister of Defense and the Military Commander of the Salvadoran regular forces in Cabanas Department tested the control of the armed forces by the central government as well as their adherence to order and discipline. The commander's defiance threatened the principle of unity within the armed forces. Although this was certainly not a welcomed development, the successful resolution of this internal problem by President Magana in his capacity as Commander-in-Chief of the Armed Forces is an affirmation of adherence by the military to civilian governmental authority. Also significant were the repeated reaffirmations of allegiance to the President and the central government by military leaders involved in the crisis. (Appendix E: Press Communique by the Salvadoran Armed Forces on January 9, 1983.)

IV. ECONOMIC AND POLITICAL REFORMS

A. Agrarian Reform

Agrarian reform, which is the cornerstone of the reform process, has three components, two of which are active. Phase I affects owners of property holdings in excess of 500 hectares (ca. 1235 acres) and those of less than 500 hectares voluntarily sold to the Salvadoran Agricultural Transformation Institute (ISTA), which is responsible for implementing Phase I. Phase II, whose implementation has been deferred since its legal inception, would affect owners with holdings in the 100 to 500 hectares range. Phase III of the reform allows renters and sharecroppers to purchase up to a maximum of seven hectares (ca. 17.3 acres) of land. (Appendix F: Agrarian Reform Status Report.)

In light of an economic downturn and severe fiscal/monetary constraints, progress in both Phases I and III has been significantly hampered by a lack of government resources to finance and assist the reform. It should be noted, however, that the granting of definitive titles is dependent on payment of full compensation to the previous landowners. The government's inability to provide speedy compensation has been a major source of some continuing resistance to the reform by former owners. Moreover, the government's lack of funds has limited its ability to provide needed credit, administrative support, and technical assistance to the reform effort. (Use of U.S. assistance to support the government's compensation efforts is precluded by Section 620(g) of the Foreign Assistance Act of 1961, as amended, and Section 730 of the International Security and Development Cooperation Act of 1981.) Despite these fiscal constraints, and despite disruptions caused by the ongoing conflict, particularly in the eastern portions of the country, progress was evident and in some aspects substantial in both Phase I and Phase III of the agrarian reform. The conversion of all large farms, for inclusion under Phase I, into cooperatives was accomplished by the government soon after the announcement of the reform in March 1980. Phase I encompasses 328 properties, most of which are now production cooperatives completing their third year of operation. Forty-seven of these cooperatives in conflict zones have been seriously affected to the point that twenty-seven have been abandoned. Nevertheless, the operating farms have 29,755 direct beneficiaries (cooperative members)

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and encompass 0.5 million acres of land (approximately 15 percent of El Salvador's total farm area). To date, 78 million dollars in cash and bonds have been used to compensate former landowners, and 22 cooperatives have received definitive titles to the properties which they are working.

PHASE I AGRARIAN REFORM STATUS

	As of 7/31/82	As of 12/31/82	Change
Total Number of Properties Claimed	328	328	0
Estimated Direct Beneficiaries	29,755	29,755	0
Land Area Affected (Acres)	554,310	554,310	0
Property Purchases (Former Owners Compensated)	124	130	6
Compensation Paid (\$)			
Cash	6,149,009	6,182,544	33,535
Bonds	70,978,800	72,621,320	1,642,520
Total	77,127,809	78,803,864	1,676,055
Titles Issued to Cooperatives	18	22	4

Progress in Phase I of the agrarian reform continues, despite difficulties. One of the most serious problems is the lack of money to make payments to former landowners, and at the same time finance credit and other necessary services for the new cooperative farm operations. During the July-December period, total compensation in cash and agrarian reform bonds rose nearly \$2 million to approximately \$78.8 million. In December, the Salvadoran Government was finally able to establish a fund of \$19.5 million for Phase I payments, and disbursement is now underway. Some \$3.8 million will be used for cash payments on 105 properties; the balance will be used to pay interest on agrarian reform bonds.

The availability of investment credit to Phase I cooperatives has also been problematic. Although \$14.8 million has been available for this purpose, the banking system has been reluctant to provide such credits in light of the current economic situation and the fact that a number of cooperatives have had to reschedule payments on their short term production credit. Agricultural production credit, on the other hand, has been available. During the current crop year the national banking system provided Phase I cooperatives with \$88.7 million for production credit. This is an increase of 25% over the last crop cycle. In addition, \$23.8 million was programmed to reschedule loans extended during the two previous crop years.

Although the primary problem is insufficient money for compensation and credit, other constraints limit progress. These include inadequate technical services to cooperatives and the absence of adequate technical experience in addressing such matters as the number of cooperative members relative to farm size and arrangements for farm management assistance. The delivery of definitive titles to cooperatives by ISTA, while continuing, has been slow. Since July, four titles have been delivered to cooperatives as compared to twelve delivered during the first six months of 1982. In order to accelerate this activity the GOES intends to work on improving legal and administrative procedures and coordination with other GOES institutions involved in the process. ISTA initiated a much needed program to improve both accounting and management on Phase I farms. This new program began in October on the first 18 farms. In the next 6 months, ISTA plans to expand the program to 75 additional cooperatives. Nevertheless, ISTA's overall administrative capacity continues to be a constraint to more rapid implementation of the land transfer process and to the provision of effective management assistance to cooperatives. In the ensuing months efforts should be directed toward improving ISTA's administrative capacity and performance in dealing effectively with its client cooperatives.

A reduction in area planted for most crops and a corresponding decrease in total production has been estimated for Phase I farms in 1982-1983. In part, this is the result of 27 cooperatives having been completely abandoned due to violence. Crops and equipment of another 20 operating farms have been partially or totally destroyed or their operations seriously interrupted by subversives. Other factors influencing production and income have been low world prices for primary commodities, the lack of medium and long-term credit (as noted above) needed to improve equipment and infrastructure on decapitalized farms, insufficient management training and poor weather, both droughts and floods. These factors have also adversely affected the ability of a number of

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Phase I farms to repay production loans and carry the burden of agrarian reform debt.

In spite of the problems facing Phase I, the reform is moving forward. Cooperative members continue to gain experience in managing their farms, assisted by personnel from ISTA and other institutions. With the establishment of their own cooperative association (FESACORA) they now are in a better position to deal with government and private entities that affect their future.

PHASE I AGRARIAN REFORM STATUS (Decree 207)

	As of 7/31/82	As of 12/31/82	Change
Number of Farmers who Have Filed Title Appli- cations for Land (Direct Beneficiaries)	29,706	39,344	9,638
Total Beneficiaries (Estimated at 6 Members per Family)	178,236	236,064	57,828
Land Area Affected (Acres)	121,100	155,237	34,137
Title Petitions Filed	37,235	50,409	13,174
Provisional Titles Issued	32,349	34,674	2,325
Property Owners Compensated	13	136	123
Amount of Compensation Paid (\$)	614,130	3,584,199	2,970,069
Definitive Titles	251	408	157
Reinstallation of Evicted Beneficiaries	2,138	2,532	394

The greatest progress in Phase III has been the increased applications for title. The number of title applications rose dramatically from 29,706 to 39,344 in the past six months. This increase was the direct result of emphasis by PINATA, the government agency in charge of Phase III, on soliciting more

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applications. There was less progress in the number of provisional titles issued. The number of provisional titles rose from 32,349 to 34,674. Aggressive action by the government, and particularly FINATA, blunted the potentially adverse effects of the Constituent Assembly's initial actions in the immediate post-election period, which was interpreted by many as limiting the right of potential beneficiaries. The government effectively dealt with the increasing numbers of evictions in April - June 1982, and public ceremonies attended by high ranking banking, government, and military personnel to deliver titles and compensate ex-owners made clear the government's commitment to the implementation of Phase III.

Since July, title applications have been double the number of the previous six months. Most dramatically, the flow of new applications increased monthly from a low of 105 in June to 4,961 in December, as a result of FINATA's national campaign. Greatly increased advertising through radio, television and newspapers encouraged both landowners and potential beneficiaries to visit FINATA offices to submit claims for compensation or to exercise their rights as beneficiaries. In October, mobile teams were sent into the field with the objective of visiting every municipality in the country by the end of February 1983 to solicit new applications. After initial success in western El Salvador, a second mobile team in the east began work in November. The results of these efforts have been impressive. Of the 13,174 new applications received since August 1, 9,929 are a direct result of the mobile campaign in the west.

There has also been some progress in issuing definitive titles, which depends upon the compensation of ex-owners. Since July, 123 ex-owners have been compensated, compared to only 13 prior to that time. As of December 31, 1982, a total of \$3,584,199 in cash and bonds had been paid to 136 ex-owners. The result is that 408 definitive titles have been delivered to former renters, an increase of 157 over the last six months with an additional 460 planned for issuance in January.

There is a close correlation between security in the various departments and progress on agrarian reform. In the departments of Ahuachapan, Santa Ana, Sonsonate and La Libertad Phase III of the agrarian reform is well underway or almost fully implemented. These departments lie in areas relatively free from guerrilla activity. However, progress in the eastern departments (refer to Appendix G, Agrarian Reform Status Report by Department) has been slow because guerrilla attacks have prevented agrarian reform promoters and FINATA authorities from reaching many potential beneficiaries.

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There was a sharp increase in illegal evictions following the March elections and change in government. By August, a total of 4,682 farmers who had made applications for land later filed complaints that they had been evicted. In many instances elements of the army and security forces restored illegally evicted peasants back to their land. From September through December, a total of only 109 evictions were reported, with only two complaints in December. A total of 2,532 farmers, mainly those with provisional titles, have been returned to their land by the government. While not being handled as expeditiously as had been hoped, the remaining 2,259 complaints are under review by FINATA authorities and in some instances the judicial system. Some cases involve campesinos whose claims as beneficiaries may, in fact, be in doubt. FINATA continues to work directly with local military authorities in restoring peasants to the land.

Future progress in eliciting applications from remaining eligible beneficiaries will depend upon security developments in the eastern zone of the country, a consistent and effective effort by FINATA's field personnel, and the cooperative efforts of the campesino organizations. Progress in the area of evictions will depend on the consistent support of the military and FINATA. Finally, success in eliminating bottlenecks in the land adjudication process and in effecting compensation will condition progress in awarding definitive titles and will also tend to mitigate the evictions problem. Resources will have to be made available for compensation in the context of severe budgetary constraints.

B. Marketing Reforms

At the beginning of 1980, the Government of El Salvador nationalized the marketing of two major export crops, coffee and sugar (the third, cotton, was already being marketed through a producer's cooperative). It created two state entities, the National Coffee Institute (INCAFE) and the National Sugar Institute (INAZUCAR) which, in addition to purchasing crops from the growers or processing plants and arranging storage and shipment, have responsibility for administering Salvadoran exports under international quota arrangements (the International Coffee Agreement) as well as non-quota exports.

There has been growing interest in returning the marketing of coffee exports to the private sector, as a means of increasing the efficiency of marketing operations and recovering quality price premiums which private Salvadoran brands had earned. It is also argued that prices being paid by INCAFE to the growers have not covered costs, that large portions of last year's crop remain unsold, making it difficult for growers to repay bank credits, and that INCAFE has not been sufficiently aggressive in marketing surplus coffee stocks to non-quota markets. These problems are largely derived from depressed prices of coffee on the world markets and declines in the volume of imports by consuming countries. Returning the marketing operations to the private sector would not in itself resolve these problems. Also, the serious balance of payments crisis which El Salvador is facing argues strongly for retaining control over the foreign exchange receipts from the country's major export in the immediate future. Nevertheless, for the longer run, there is widespread opinion that coffee marketing is an integral part of the private enterprise system in El Salvador.

The formation of INAZUCAR replaced independent marketing arrangements made by private growers; no centralized sugar marketing company similar to the Compania Salvadorena del Cafe existed prior to nationalization. With sugar currently being sold at a substantial loss, there appears to be little interest in the private sector in taking over INAZUCAR at present, although there is interest in increasing producer involvement in the decision-making process.

C. Financial Reforms

The decree which nationalized the Salvadoran financial system in March 1980 provided that initially the government would purchase all shares of the banking institutions through bonds payable over five years. It also provided for the subsequent return of a minority equity to the private sector, through the sale of shares, 20 percent of which would be offered to the employees of the institutions, and 20 percent to the private sector (with former owners to be given first refusal). Proceeds of the sale are to be used to amortize the bonds.

Issuance of bonds to the former owners was preceded by an audit, which took longer to complete than expected. All Salvadoran banks and savings and loan institutions have now been acquired by the government and the bonds issued; amortization appears to be proceeding on schedule. Shares have not yet been sold to the public, pending formation of the companies and registration of the stock. It is expected that the shares will be offered in February, although it is not yet known to what extent the public will respond.

At the same time that Salvadoran financial institutions were nationalized, foreign banks with branches in the country were required to close out their deposit accounts within one year from the issuance of the decree. It has been difficult to do so in practice, because their assets could not all easily be called in or liquidated on such short notice. As a result, the two foreign banks affected have been given extensions of the period during which they can operate, which is now due to expire December 31, 1985. The requirement itself is believed by some government and private leaders to have been a mistake, as these banks provide links to the international banking community which are advantageous to El Salvador, and in any event, the primary problem which the reform was designed to address--the concentration of control over the economy by a small group of individuals or families--is not relevant to these banks. There is also some support for the eventual transfer of all internal banking operations to the nationalized domestic banks. The resolution of this issue and others involving proposals "to reform the reforms" probably will fall to the new government to be elected in 1984.

Nationalization has not significantly altered the nature of the financial institutions, which continue to operate on a commercial basis, although some of the abuses of the past (favoritism, the making of unsecured loans, etc.) appear to have declined. Increased private participation in the system, including at least partial return to privately owned banks could, however, improve the management performance and help restore international banking contacts which have been lost in the last three years.

The issues of the restoration of private market mechanisms and the proper role of the government in foreign trade and banking are heatedly debated in El Salvador.

D. Political Reforms

The Government of National Unity is attempting with some success to check the political polarization, which has plagued the country for years, and is laying a basis for a democratic, pluralistic government founded on broad consensus. These efforts, difficult in the best of times, are being attempted while extremists of the left and right continue to use force to achieve their own ends.

For example, the government has just gone through its first cabinet crisis. After give-and-take by the three major parties, the president established his authority to change ministers within his government. While the parties vehemently protested the president's proposed changes, fearing a reduction of their representatives in the cabinet, compromise and

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consensus ultimately prevailed, and the changes were carried out. Similarly, the insubordination of Colonel Ochoa in refusing an order transferring him overseas, and the resolution of the affair, has strengthened the president's hand as the chief executive of the government and the Commander-in-Chief of the Armed Forces.

The elections of March 28 created a representative government for El Salvador. The political legitimacy of this government and the close working relationship between President Magana and high-ranking members of the military are gradually overcoming distrust and distance between military and civilian political leaders. The Political Commission, created by the multi-party Pact of Apaneca, includes the President and three Vice Presidents, the Defense Minister, the Foreign Minister (also representing the PDC), and three major political party leaders (Roberto D'Aubuisson of ARENA, Wilfredo Navarrete of PCN, and Francisco Quinonez of PPS). The Commission has scheduled municipal and presidential elections for no later than 28 March 1984. The Constituent Assembly has appointed and confirmed an independent Central Elections Commission to oversee these elections. The president is expected soon to announce a Peace Commission which will begin work on reviewing amnesty, dialogue proposals, and political reconciliation. A new draft amnesty law is under consideration within the Constituent Assembly.

The free and fair March election showed, as did the failed guerrilla general offensive in January 1981, that the Salvadoran people do not support the guerrillas. The election was an important step in establishing a democratic process which offers the best chance for a peaceful resolution of the conflict. The political parties which contested the elections are working together despite a history of distrust and resentment, and have compromised on the basic goals of the provisional Government of National Unity, as expressed in the Pact of Apaneca. Many feared a far rightist domination of the Constituent Assembly following the March elections, but this has not occurred. On the contrary, far rightist elements participating in the Assembly have not achieved a clear majority, and issues are being hammered out within a democratic forum. The process of bargaining and compromise has begun to take hold. This is especially significant in the case of ARENA and the PDC which had previously been violently opposed to each other's political ideologies. Centrist forces have dominated on significant occasions in the Assembly. Most notably, on October 28 the Assembly narrowly refused to approve an ARENA resolution rejecting all dialogue with the FDR/FMLN, instead sending the proposal to committee for "reasoned consideration" where it has remained.

V. Elections and Reconciliation

The Pact of Apaneca was signed on August 3, 1982 by four of the five parties represented in the Constituent Assembly. Only the small Democratic Action Party (AD) did not sign, although it has cooperated with President Magana on several key issues. The Pact commits the Salvadoran political system to work toward achieving seven significant objectives: peace, democratization, human rights, economic reforms, consolidation of reforms, confidence and security, and international support. The Pact of Apaneca represents a significant step in building democracy and improving the human rights situation.

Two of the three commissions originally envisaged for achieving the Pact's objectives have been created: The Political and the Human Rights Commissions. The Political Commission was established on August 29. On September 29, it issued a political timetable:

- calling for the designation of the new Central Elections Commission (CCE) by the Constituent Assembly;
- instructing the CCE to draft a transitional electoral law to guarantee that elections reflect the people's free choice;
- setting the presidential and municipal elections for no later than March 28, 1984;
- setting a deadline for the drafting (April 20, 1983) and the submission to the Constituent Assembly (June 30, 1983) of the new electoral law;
- requiring that the new constitution be promulgated by March 31, 1983;

The Human Rights Commission was set up on November 30 and its members installed on December 2. President Magana said on that occasion "This Commission will be in charge of applying the overall strategy and of implementing mechanisms that will promote, disseminate and protect human rights."

The third commission--the Peace Commission--is expected to be created soon. One of its principal goals will be to enlarge participation in the political process for those

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individuals wishing to eschew violence. We believe the Commission will look into offering amnesty for and dialogue with the guerrillas. The Commission is also expected to make recommendations to the President on ways to achieve national political reconciliation.

The commitment of the Government of El Salvador to national and regional political reconciliation through democratic processes is also evident in its signature of the Final Act of San Jose. In this document, El Salvador along with seven regional democracies, including the U.S., set forth the conditions they regarded as essential for the establishment of a true and lasting peace in all of Central America. In addition to advancing principles for reducing regional tensions, the signatories recognized the establishment of democracy within each nation of the region as the only real guarantee of peace. By signing the Final Act, the Salvadoran Government committed itself to continue its development of democratic institutions based on free and regular elections, to respect human rights, and to promote national reconciliation.

The Political Commission also established a National Committee for Economic Reconstruction (CREN) to rejuvenate the battered economy. The Committee is comprised of three representative private sector leaders and three cabinet members from the government.

In its session of November 16, 1982, the Constituent Assembly passed a decree creating a temporary law for the Central Elections Commission. The Decree passed with minimal opposition. It will regulate the activities of the Central Elections Commission until the Constituent Assembly approves a permanent electoral law. The five members of the CCE are drawn from the five major parties. The president of the CCE is elected from and by the five members of the council. Each registered party is authorized to nominate one direct representative before the CCE. Among the specific responsibilities of the CCE are: drafting a new electoral law, preparing a new electoral (voter) registry, authorizing political activities by parties in formation, providing publicity for future elections, and preparing its organizational and procedural regulations.

The Constituent Assembly is drafting a new constitution. The Drafting Committee has held numerous public hearings to consider the concerns of private citizens and non-government groups. Progress has been slow but the commitment made to the Political Commission to complete the constitution by the end of March 1983 by Assembly President Roberto D'Aubuisson is encouraging.

Elements of the security forces of the country, however, dealt a setback to efforts for political reconciliation by jailing several FDR leaders still operating in El Salvador. In October 1982 elements of the security forces arrested several FDR/MNR leftist leaders and held them incommunicado for several days. The Ministry of Defense, however, moved quickly to ensure their protection and a respect for legal processes. The spokesman for the armed forces publicly announced the names of those arrested and stated that they would be held under procedures set forth under Decree 507. The government claims to have evidence implicating some of the detainees in supporting the guerrillas. Following their arrest, guerrilla Radio Venceremos referred to them as "FDR leaders." Their case suggests progress in greater respect of established legal procedures. In the past, similar arrests might not have been publicly acknowledged and those detained would have been listed as disappeared. In this case, family members, Embassy officers, as well as ICRC officials have been able to visit them in prison. (Other cases are cited in Section III.)

VI. Investigations of the Murders and
Disappearances of U.S. Citizens.*

Churchwomen

Since the July certification, there have been significant developments in the investigation and prosecution of the case of the four American churchwomen murdered in El Salvador in December 1980. On February 13, 1982, presiding civilian Judge Bernardo Rauda Murcia opened judicial proceedings against five former National Guardsmen and dismissed proceedings against a sixth, who was found not to have been involved in the murders. During the next nine months, Judge Rauda conducted the judicial investigation and summary phase of the proceedings as required by Salvadoran law. In the summary phase, all "extrajudicial" (security force) testimony was repeated before the judge. The considerable body of testimony was formally prepared for inclusion in the plenary (trial) stage. In addition, additional statements and information were taken and some new evidence introduced. In November, Judge Rauda reviewed the entire court record. He concluded that the evidence warranted elevating the case to the plenary stage, which culminates in jury trial. On November 15, Judge Rauda ordered the case to trial. On December 6, he appointed three attorneys as counsel for the five accused. Subsequently, the court-appointed defense attorneys filed an appeal against the order raising the case to trial, citing insufficient evidence. The appellate court ruled that the trial judge had failed to provide the defense attorneys with formal notification of his order raising the

*Section 728(e), as amended by H.J. Res. 494, required a determination in the first and second certifications that the Government of El Salvador had made good faith efforts both to investigate the murders of the six United States citizens in El Salvador in December 1980 and January 1981, and to bring to justice those responsible for those murders. A determination in the second certification was also required that the Government of El Salvador had taken all reasonable steps to investigate the disappearance of Mr. John Sullivan in January, 1981. We have continued to address these cases in this third report, and in addition to discuss the disappearance of Patricia Cuellar, and the death of Michael Kline, because these cases are of continuing concern both to the Executive Branch and the Congress.

case to plenary (jury trial stage). As a result, on January 11, Judge Rauda formally notified the defense attorneys of his order raising the case to trial. Two defense attorneys again filed an appeal against the trial order. The appellate court is expected to render a decision on the substance of the appeal by early February.

Under the Salvadoran Code of Criminal Procedure, there are several judicial steps ahead. The prosecution or defense may apply for a change of venue. With a change of venue, a new judge would be appointed. Once venue is determined, both sides have a 15 day "period of proof" during which time they must introduce all remaining evidence which they propose to consider during the trial. Following the period of proof, the prosecution submits its legal brief to the judge. The defense then submits its legal brief in response. On the basis of the court record and the two briefs, the judge prepares a list of "special issues" (questions) for the jury. The jury is then selected. The prosecution and defense present their arguments before the jury. The jury considers the oral and written arguments, deliberates on the judge's special issues, and reaches a verdict. As of mid-January 1983, the overwhelming weight of the evidence demonstrates that the accused former guardsmen acted on their own and not pursuant to higher orders.

The American Institute for Free Labor Development (AIFLD) Consultants.

Evidence before the court concerning the murder of two U.S. land reform consultants does show higher level involvement. In May 1982, the Salvadoran Government created a new investigatory working group and initiated a renewed investigation into the AIFLD murders. The working group reconsidered most of the old testimony already in the record and interviewed many new witnesses. In September 1982, two National Guardsmen confessed to the murders. In their detailed confessions, they implicated two Salvadoran officers (Lt. Lopez Sibrian and Capt. Eduardo Avila) and a civilian (Hans Christ) in the murders. On September 22, 1982, the two National Guardsmen and on September 27, 1982, Lt. Lopez Sibrian were remanded to a civilian court. Reports indicate that Capt. Avila has fled the country and the civilian suspect also remains outside of El Salvador. On September 30, Judge Hector Jimenez ordered the detention of the two guardsmen for continued judicial investigation (summary phase), but ordered the release of Lt. Lopez Sibrian. The following day, Judge Jimenez was transferred from his court and a new judge--Lopez Argueta--was named to succeed him. Judge Lopez repeated much of the investigation testimony during every step of the summary phase in September-December 1982. Defense attorneys attended every step of the process. On December 2, 1982, Judge Lopez ordered the case against the two guardsmen to the plenary (trial) stage and dismissed the case.

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against Lopez Sibrian. The Attorney General immediately appealed the dismissal of the case against Lopez Sibrian and the defense attorneys appealed the order raising the case against the two guardsmen to plenary. The San Salvador Appellate Court has not yet issued a decision on the appeal. Lt. Lopez Sibrian remains on active duty while the case is pending. The two guardsmen are being detained at Mariona Prison.

The prosecution of the two National Guardsmen constitutes real progress, but the disposition of the case against Lopez Sibrian remains of great concern, which we have made clear to the Government of El Salvador at the highest levels. In sum, the executive branch of the Salvadoran Government has given very strong support to the investigation of this case, but the trial of Lopez Sibrian has been frustrated in the judiciary. We are, however, continuing our efforts to assure that justice is done in this case.

Patricia Cuellar

Patricia Cuellar, an American and Salvadoran citizen resident in El Salvador, disappeared from her residence on July 18. Later that day or early the following day her father, a Salvadoran citizen, and his maid also disappeared. Upon learning of Ms. Cuellar's disappearance, the Embassy immediately contacted senior Salvadoran Government officials to request assistance in locating these individuals. In response to the Embassy's requests, the Salvadoran Government assigned a full-time investigator to the case. The Embassy has received assurances from Defense Minister Garcia and President Magana that agencies and/or personnel of the Government of El Salvador, including the armed forces, were not involved in the abductions. A witness who was interviewed by the National Police and polygraphed by the FBI, however, testifies that uniformed, armed men entered Patricia Cuellar's apartment and removed possessions on the same night as her apparent disappearance. The investigation has been hampered by concern for the physical safety of an alleged eyewitness.

John Sullivan

Since the last certification, the whereabouts of John Sullivan, who has been missing since January 1981, has not been determined. The Government of El Salvador has continued to cooperate with our Embassy in efforts to locate John Sullivan. The most promising lead is a preliminary report resulting from the exhumation of a body at Nuevo Cuscatlan,

on the outskirts of San Salvador. As reported to the Embassy, the body of an unidentified individual was discovered the morning of December 29, 1980, and was buried the following day. Other circumstantial evidence points to these being the remains of John Sullivan. However, normal means of forensic identification have not been possible due to the condition of the body. Identification efforts are concentrating on comparison of bone structure. These efforts continue. An American forensic specialist apparently believes that there is a substantial possibility that this is the body of John Sullivan.

Michael Kline

Mr. Kline, an American citizen traveling through El Salvador to Costa Rica, died on October 13, 1982 of gunshots fired by a member or members of the Salvadoran armed forces. The circumstances leading up to Kline's death are unclear and under investigation by the government. He was traveling by bus through the eastern Salvadoran Department of Morazan when, according to statements by soldiers, they stopped the bus and its passengers for inspection purposes. When Mr. Kline was unable to produce identification, he was detained. According to statements made by soldiers who had detained Mr. Kline, on the trip to local headquarters Mr. Kline attempted to seize one of their weapons, but failed and tried to flee. As reported by these soldiers, he did not heed warnings to stop and was consequently shot and killed. The soldiers then left the body at the scene and travelled to headquarters to report the incident to their supervisors. An autopsy report shows that Mr. Kline was shot twice in the head and twice in the back. Two of the wounds bore powder burns indicating they had been inflicted at relatively close range. These two wounds, verified in the autopsy results, appear to contradict the information provided by the Salvadoran armed forces. The Department of State and the Embassy in San Salvador have brought these apparent contradictions to the attention of Salvadoran officials in an effort to learn the facts of Mr. Kline's death, so that, if warranted, law enforcement action may be taken by the government. An investigation is underway.

VII. Conclusion

This report concludes that El Salvador has made progress on all the elements contained in Section 728 (d) of the International Security and Development Cooperation Act of 1981. The situation is not perfect and the progress was not as great as desired, but it is progress nonetheless. The Government of National Unity is making serious efforts to improve the situation.

The major difference between this report and the last is that this one, in addition to describing the elements of the certification process, describes the beginning of a process of building democratic structures and principles. It is hard work, requiring patience and compromise. It is especially difficult in a government formed by political parties whose distrust for each other goes back twenty years and more. Yet the work progresses one step at a time.

This report comments on progress on all the issues required by law. Beyond that, however, it documents that a democratic system is taking root in El Salvador. If that system prospers, it may eventually cure many of the ills that have afflicted Salvadoran society for years. While this is a task which the Salvadorans themselves must complete, their success, as Section 728(a) of the Act recognizes, will depend upon U.S. support and sympathetic understanding of their efforts.

APPENDIX A

BASIC PLATFORM OF GOVERNMENT
("Pact of Apaneca")

We, the President of the Republic and the representatives of the Political Parties in the Constituent Assembly, assembled under the initiative of the President,

OVERWHELMED by the popular will expressed on March 28 to constitute a Government to guide the country toward the goals of peace, social and economic progress, and the fulfillment of all democratic values,

CONCERNED by the evidence of divisions in Salvadoran society,

MOTIVATED by the imperative need to achieve a national reunification,

CONVINCED of the need to rationalize the functions of government,

HAVE AGREED

TO ADOPT a Basic Platform of Government founded in those principles, achievements and aspirations--expressed as objectives of a Government of National Unity--on the following basis, shared jointly by all political parties that we represented during the electoral campaign:

PEACE

To achieve peace and tranquility, in a social context that will allow all Salvadorans to live, to work and to progress as human beings, as a result of national social reunification, without regard to narrow self-interest, and through the expression of political interests in an orderly institutional manner.

DEMOCRATIZATION

To obtain effective participation of all social sectors in the operation of government by the people through their legitimate representatives--thus assuring confidence in and the effectiveness of the process of political participation and expression.

HUMAN RIGHTS

To achieve the fullest exercise of all inalienable human rights, the Government is to be the effective guarantor, not only of the physical security of individuals, but also of the individual's pursuit of accomplishments.

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ECONOMIC RECOVERY

To establish the proper climate to create confidence for the development of a socially responsible market economy, creating the stimulus for different factors of productivity that will encourage economic development sufficient to fulfill adequate social and political objectives, emphasizing employment and social well being.

The economic recovery shall begin through a dynamic reactivation of all manufacturing industry, construction, tourism, handicrafts and general services.

The agricultural sector shall be provided with the necessary financial resources and technical assistance and the legal protection of private property rights shall be guaranteed. The unique problems characterizing the development of small enterprises shall be given special attention.

With the private sector, working in a spirit of cooperation and unity, efforts will be mounted to obtain financial assistance, from both bilateral and multilateral sources, to create and strengthen a climate for private investment.

**SOCIAL AND
ECONOMIC REFORMS**

To consolidate and guarantee the reform process in such a way as to obtain a greater level of economic and political participation of all social sectors, attempting to increase productivity for the general well being, as one basis to decrease social tensions to achieve an harmonious coexistence.

We shall seek to improve and to increase effectiveness in the areas of Agrarian, Banking and Foreign Trade Reforms.

In the Agrarian Reform process, this affirmation includes financial and technical assistance, protection of the legal status of cooperatives, unions, organizations of the campesinos, as

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relates to property and possession of land, and the preservation of the rights of former landowners to just compensation.

CONFIDENCE AND SECURITY

To achieve a climate of confidence in the judicial system in order to create the needed social confidence to render possible the realization of the other major goals of the Government.

The Government of National Unity shall try to restore the values of our society, with the special purpose of eradicating corruption in all government activities; will adopt measures of austerity in public expenditures; and will seek to maintain the independence of the powers of the State with respect to the public and its institutions. Special emphasis will be placed on the administration of justice through strengthening the Judicial System.

STRENGTHENING OF INTERNATIONAL SUPPORT

To improve our capacity in the international sphere, so as to obtain higher levels of international cooperation, political support and respect for our international rights, emphasizing our independence, our equality among nations, and our national sovereignty, to guarantee to all Salvadorans the right to self-determination and to oppose the interference of other States in our internal problems.

CONSEQUENTLY, WE HAVE AGREED

To respect and to obtain respect of those principles, achievements and aspirations, while maintaining our identities as separate political parties, to achieve the aforementioned general objectives, to do so in full exercise of all our rights, and in compliance with our responsibilities, to adopt the following:

A PROGRAM FOR IMMEDIATE ACTION

For the establishment of the following commissions:

PEACE COMMISSION:

There will be created by an executive decree a Peace Commission which shall be composed of institutions, groups and persons devoted to study the problem and which shall propose the necessary solutions to obtain an everlasting and strong harmony and social stability.

HUMAN RIGHTS COMMISSION:

To protect and promote human rights, in the fullest sense, a Human Rights Commission will be created by executive decree. This Commission will submit recommendations and undertake appropriate measures for the effective guarantee and achievement of all Human Rights, recognized by our Constitution and in International Agreements.

POLITICAL COMMISSION:

Coordinated by the President of the Republic, with the participation of the Vice-Presidents and the Ministers of Foreign Affairs, Defense, and representatives of the political parties, a Political Commission shall be created by executive decree, to coordinate compliance and execution of this Basic Platform of Government, based on the need and the will of the present Government to strengthen the democratic process. Among other things, the Commission must reach agreement before September 30, 1982, on a schedule specifying the dates for the following political events:

- a) Appointment of new Central Electoral Council.
- b) Drafting of rules and regulations for the electoral process.
- c) Municipal elections
- d) Presidential elections
- e) The transfer of Executive Power by the present interim regime.

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All the undersigned parties, in our representative capacities, agree to urge the members of the Constituent Assembly to enact a Political Constitution as soon as possible.

Signed in the city of Apaneca, Department of Ahuachapan, Republic of El Salvador, the twelve hours of the third day of August, nineteen eighty-two.

Signed by:

Alvaro Magana
President of the Republic

PARTIDO DEMOCRATA CRISTIANO
ALIANZA REPUBLICANA
PARTIDO DE CONCILIACION NACIONAL
PARTIDO POPULAR SALVADORENO

APPENDIX B

MAGANA ADDRESS ON HUMAN RIGHTS COMMISSION

President of the honorable Supreme Court of Justice, Vice President of the Republic, honorable ambassadors and chiefs of missions accredited in the country, members of the Political Commission and the Human Rights Commission of the Apaneca Pact, ministers and deputy ministers, deputies of the honorable Constituent Assembly, magistrates of the honorable Supreme Court, members of the Central Electoral Council, representatives of the armed forces, ladies and gentlemen:

Since the day when the National Unity Government was established, as a result of the democratic expression of the people's will at the polls, we have been working silently and seriously to find solutions to the country's problems. In this way, we try to reply to the challenges that the historical process of development poses to contemporary Salvadoran society.

When I delivered my inaugural speech in the honorable Constituent Assembly, I was heavily applauded for uttering a denial that was destined to pass into history. I said then: We have nothing to avenge, nothing to repress and nothing to negotiate. Within the context of those ideas, my government cannot honestly and sincerely be accused of having staged any repression whatever. Nor can it be said that we have gone to remote corners under the cover of darkness to talk with those who were not favored by the people's vote and do not share with me today the responsibility of leading the nation's destiny. All of us in the National Unity Government have been working together, I repeat, on the task of taking well-planned and necessary steps to find solutions to our problems.

The first great step was the adoption, on 3 August 1982, of the basic government platform, which history already calls the Apaneca Pact. This important and momentous document contains all of the objectives that the political parties garnered from the people. These include the deeply felt desire to live in peace, to have a democratic regime and to enjoy human rights and a standard of living that is appropriate for 20th century man.

On 29 August, a few days after the Apaneca Pact was signed, the executive branch decided to create the Political Commission. With great patriotic fervor and without rest or respite, this commission has undertaken the difficult task of ordering and guiding our institutional development. Everyone is aware of the political timetable that the commission issued to the national and international public on 29 September. It established the final dates for the implementation of momentous actions in our nation's republican life, such as the composition of the Central Electoral Council, the recommendation that the

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presidential and municipal elections will be no later than 28 March (1984), etc.

The historic Apaneca document establishes that the human rights issue is one of the basic objectives of the national unity government's platform. The document signed by the political parties states: To achieve the full enforcement of the inalienable rights of the individual in the most complete sense and to render the state the effective guarantor not only of the individual's physical safety but of his full development as well.

In order to implement that which is established in the Apaneca Pact, the executive branch issued the resolution, creating the Human Rights Commission, which will be charged with achieving the aforementioned objectives.

Therefore, ladies and gentlemen, I have called you here to take a momentous step in the strengthening of democracy in our country. I am referring to the formal installation of the Human Rights Commission.

Human rights have a dimension that surpasses the limits of the individual's physical safety and his relationship with the state. It is unquestionable that the state has the obligation to protect and promote human rights and to work for their full enforcement. It will find itself internationally isolated if it does not meet such essential obligations.

El Salvador voted in favor of the Universal Declaration on Human Rights; therefore, having been duly ratified by the honorable assembly, that document is the law of the country.

A government that does not respect human rights, as they have been universally, contradicts the very reason for the state's existence, creating a negative international image and running the constant risk of being destabilized.

In El Salvador, the full enforcement of human rights will contribute to peace and to the eradication of other causes of the nation's crisis. Therefore, it was urgent, necessary and imperative that the Human Rights Commission be created in El Salvador. This commission will be in charge of applying the overall strategy and of implementing the institutional mechanisms that will promote, disseminate and protect human rights.

The acts of this commission, which is composed of honorable citizens, will not be mere propaganda intended to win points with the international public and foreign governments. No. As of today, the Human Rights Commission will take the honest and feasible path that leads to the enforcement of such rights and to the peaceful and harmonious coexistence of all sectors of Salvadoran society, so that there may be an equitable and

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general enjoyment of economic recovery, peace, democracy and political stability.

It will also be the result of a process of economic recovery that should lay the foundations for genuine economic development in the country. It will also be the result of a process of consolidation of the agrarian and social reforms in general, as essential tools in overcoming the social conflicts. It will also be the result of a number of activities by the Human Rights Commission that we are installing today.

In this sense, lasting and just peace can only be achieved as long as we have a democratic government whose leaders are freely elected and who will promote government programs to overcome social conflicts through balanced economic development and who will guarantee the full enforcement of human rights. This is the kind of government that we want to have and that we are already conducting. We are also ensuring that future governments will be like this as well, by developing and promoting, through the political commission, the activities of the commissions dealing with human rights, peace, economic reactivation and other areas.

It could not be otherwise, because the Government of National Unity is the product of the historic 28 March elections and an important part of the country's process of pacification, and is therefore, an expression, in its entirety, of the people's will.

Distinguished members of the Human Rights Commission: While expressing thanks to you for your patriotic cooperation, I must note that 7 months ago today I said that a new page had been turned in our country and that we are writing the new pages. I am honored to welcome you to our government's historic effort to achieve peace and, at the same time, to wish you success in your tasks. In the development of those tasks you will always find support from the government and the Political Commission, which will join efforts with you to achieve the desired goals of justice, freedom and peace, for which the Salvadoran people and their armed forces struggle with true patriotic spirit. Thank you very much.

Members of Commission Listed

As the Salvadoran president has announced, the members of the Human Rights Commission are Msgr. Fredy Delgado, Flor de Marian Hasbun, Cristobal Aleman, Mario Luis Velasco, Col. Reynaldo Nuila, Jorge Ernesto Campos and Manuel Lainez Mendez. They were sworn in this morning at the Presidential House.

October 29, 1982

APPENDIX B

MEMBERS OF THE HUMAN RIGHTS COMMISSION

Msgr. Fredy Delgado, Secretary General of the Bishop's
Conference
("Catholic Church" Representative)
Flor De Maria de Hasbun, Attorney ("Feminine" Representative)
Cristobal Aleman Alas, Popular Democratic Union
("Labor/Campesino" Representative)
Mario Luis Velasco, Attorney ("Agricultural Sector"
Representative)
Col. Reynaldo Lopez Nuila, Director of the National Police
("Armed Forces" Representative)
Jorge Ernesto Campos, Construction Firm Owner ("Private Sector"
Representative)
Manuel Lainez Melendez, Attorney, ("Youth Sector"
Representative)

Appendix C

EL SALVADOR
CIVILIAN DEATHS ATTRIBUTABLE TO VIOLENCE

MONTH	PHOTO REPORTS	1/ SOCORRO JURIDICO	2/ CRIES	3/ UCA	4/ MOTHERS COMMITTEE	5/ CDJP
1980						
OCTOBER	819		1283	1438		
NOVEMBER	779		718	942		
DECEMBER	575		766	687		
TOTAL	2173		2867	2667		
1981						
JANUARY	643	2644	2293	2333		
FEBRUARY	481	983	1482	1482		
MARCH	599	1922	1784	1622		
APRIL	493	2311	2648	2341		
MAY	434	526	712	547		
JUNE	292	744	738	685		
JULY	334	586	819	667		
AUGUST	479	582	654	592		
SEPTEMBER	296	472	498	486		
OCTOBER	343	438	973	1638		
NOVEMBER	244	828	1293	216		
DECEMBER	249	1293	2146			
TOTAL	5331	13333	16276	11929		
1982						
JANUARY	279	446	636	379	631	
FEBRUARY	361	532	485	387	485	
MARCH	438	526	983	483	983	
APRIL	179	883	233	333	233	
MAY	233	373	269	334	265	
JUNE	188	323	433	487		288
JULY	163	198	523	316		199
AUGUST	196	331	437	681		384
SEPTEMBER	162	474	143	223		183
OCTOBER	143	448	488	156		482
NOVEMBER	138	631	142	288		227
DECEMBER	137	296	328	131		388
TOTAL	2638	9439	6748	4388	2441	2322

/ Socorro Juridico became the Socorro Juridico Cristiano in May after it was replaced in the archdiocese by the CDJP.

/ CRIES - The Human Rights Commission of El Salvador (private)

/ UCA - University of Central America

/ Mothers Committee - Committee of Mothers and Other Relatives of Political Prisoners and Disappeared.

/ CDJP - Legal Aid Office of the Archdiocese Commission of Justice and Peace

STATISTICAL METHODOLOGIES USED IN REPORTING
POLITICALLY MOTIVATED DEATHS

The U.S. Embassy in San Salvador has kept systematic records on public reports of political violence in El Salvador since September 16, 1980. A weekly violence report is prepared using data derived from the four San Salvadoran dailies; Prensa Grafica, Diario de Hoy, Diario Latino, and El Mundo. For consistency's sake, these statistics are culled only from information in the Salvadoran press. The newspapers are reviewed daily and articles crosschecked to avoid duplication. The reports of deaths and violent incidents are then listed.

The Embassy recognizes that this method does not record every death resulting from political violence. The actual totals are certainly higher. But for all its faults this system has the benefit of consistency and allows trends and patterns to be discerned from the data thus accumulated.

The primary source for newspaper reporting of civilian deaths are the justices of the peace located in municipalities throughout the country. One of the primary tasks of the justice is the identification and registration of bodies. Except for the areas with the greatest incidence of armed conflict, justices file regular reports with the courts. To the extent that reporters check with the courts, the figures are an accurate reflection of reported deaths. Not all deaths are reported, and not all areas are covered by reporters or justices. Therefore, the figures are subject to a degree of underreporting, but do accurately reflect trends. Disappearances are reported directly to the press by family members or are taken from court records.

Casualties resulting from military operations are not included in the Embassy figures. The Embassy figures distinguish between press reports of guerrillas killed in action and civilian deaths attributed to political violence. This is in contrast to the methodology employed by the groups compiling figures on political violence in El Salvador. Immediately following the July 28 certification, all the human rights organizations that follow violence changed their methodology. These groups, the El Salvador Human Rights Commission (CDHES), the Information for Documentation and Information (CUDI), the University of Central America (UCA), and the Legal Aid Office (Oficina de Tutela Legal) of the Archdiocese Commission of Justice and Peace, which replaced the Socorro Juridico, now include all deaths, except armed forces casualties, as civilian political deaths. Press reports of guerrillas killed in action and civilian deaths attributed to political violence are combined into a single category, deaths attributed to security forces and paramilitary squads. However, if the guerrillas admit, presumably by means of Radio

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Venceremos, that they suffered losses during military operations, this number is subtracted from those announced by the military. However, guerrillas do not regularly admit to losses.

Organizations compiling figures on political violence in El Salvador and their methodologies are as follows:

- The Legal Aid Office (Oficina Tutela Legal) of the Archdiocese Commission of Justice and Peace replaced the Socorro Juridico. The Commission began reporting on disappearances in May 1982. In mid-July, the Commission began issuing violence statistics, derived primarily from press reports. The Commission also monitors figures on deaths from Radio Venceremos (the guerrillas' clandestine radio station), denunciations by family members, and other human rights figures. The figures may be subject to duplication of reporting from other sources, and to inflation by not distinguishing between press reports of guerrillas killed in action and civilian deaths attributed to political violence.
- The Human Rights Commission of El Salvador (CDHES). CDHES collects information and issues reports on human rights from its office in the Archbishopric. Its figures on deaths and disappearances are taken from newspapers, other human rights organizations, and, on occasion, personal observation. The figures may be subject to inflation through duplication of reporting by other sources, and to inflation by not distinguishing between press reports of guerrillas killed in action and civilian deaths attributed to political violence.
- The Committee of Mothers and Other Relatives of Politi-Prisoners and Disappeared. The Committee of Mothers reports on human rights and other issues from offices adjacent the Archbishopric. Its figures on deaths and disappearances are taken from newspapers and other human rights organizations. The figures may be subject to inflation through duplication of reporting by other sources, and to inflation by not distinguishing between press reports of guerrillas killed in action and civilian deaths attributed to political violence.
- The University of Central America (UCA). The UCA acts as a human rights information clearing house, taking its information from newspapers and other human rights organizations. The UCA also fails to distinguish between press reports of guerrillas killed in action and civilian deaths attributed to political violence.

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-- Socorro Juridico Cristiano. When the Socorro Juridico was removed from the Archbishopric in May, it changed its name to Socorro Juridico Cristiano. Its statistics and methods of compiling statistics correspond almost exactly to those issued by the Archdiocese Commission of Justice and Peace. The Socorro Juridico Cristiano's figures may also be subject to duplication of reporting from other sources, and to inflation by not distinguishing between press reports of guerrillas killed in action and civilian deaths attributed to political violence.

Because of the inaccuracies inherent in violence reporting and the possibility of duplication, the reliability of the figures cannot be established. Nevertheless, both the statistics compiled by the Embassy from press reports and those issued by the various human rights organizations do demonstrate trends, despite the differences in their data base and their methodology.

APPENDIX D

TEXT OF SPEECH BY AMB. DEAN R. HINTON
AS PREPARED FOR DELIVERY TO THE AMERICAN CHAMBER OF COMMERCE
IN SAN SALVADOR, EL SALVADOR, OCTOBER 29, 1982

It is an honor and a pleasure to be speaking once again at the American Chamber of Commerce. Fifteen months ago I spoke to you in my initial address in El Salvador about United States policy and its compatibility with the goals so eloquently expressed in the Armed Forces proclamation of October 15, 1979.

Today I want to stress the constancy of American policy, to assess briefly progress made and set-backs borne these last 15 months, and then to address a critical issue which in my opinion requires a solution if the democratic process in El Salvador is not to be frustrated.

The aims of our policy remain exactly as I outlined them to you on July 31, 1981. Let me quote:

"To help a friendly neighbor defend itself against an armed insurrection aided and manipulated by Cuba.

"To help resolve the structural problems which beset this country.

"To help the people to decide their own destiny through the electoral process.

"To stimulate political reconciliation in El Salvador."

In these past 15 months, El Salvador and Salvadorans have come a long way. Although much remains to be done, the democratic process is working. March 28, 1982, is a day that will live forever in all of our memories.

Fifteen months ago in discussing the war and paying deserved tribute to your Armed Forces, I urged on you the need for unity in the face of the common enemy. Since I spoke, the Armed Forces, in defending our common heritage against Marxist subversives supported by Nicaragua, Cuba, and others of similar totalitarian persuasion, have incurred over 4,000 additional casualties. The price is a heavy one, but El Salvador's Army is slowly but surely winning the war.

This war effort is now supported by a government of national unity. Four political parties share a common commitment to the objectives of President Magana's administration. As spelled out in the Apaneca Pact, those

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objectives are: --peace, --democratization, --human rights, --economic recuperation, --consolidation of the reforms, --confidence and security, --and the improvement of El Salvador's image abroad.

The United States is proud to be cooperating with and assisting a government dedicated to achievement of such aims.

Much is required for success. The democratic reform process, so stunningly progressing here despite civil conflict, depends not only on political tolerance, freedom of expression, economic recovery, commitment to social justice, and resolute military defense, but also on civic commitment to make the rule of law a living reality. It is not enough that El Salvador's constitution and law protect individual rights, that El Salvador subscribes to a long list of international human rights conventions. The reality must change to more closely match the ideal.

Reflecting today on my experiences in El Salvador, I would no doubt be well advised to talk of other things. Perhaps to talk of the economy, of the private sector's determined efforts to keep working despite everything, including the sad practice of some Salvadorans blowing up the economic infrastructure and other Salvadorans keeping desperately needed capital outside the country; of what I consider to be, in war economy conditions, sound governmental policy; and of American economic assistance--over \$230 million this year. Or perhaps I should analyze basic issues posed by enormous population pressure and rapid population growth. Another subject, for another day, might be reflections on educational requirements to prepare citizens for their critical role in a functioning democracy.

But for better or worse, today I want to talk of a subject so many of you, because of indifference or shame or fear, or for what other reason I know not, leave in eloquent silence.

Neither internal confidence nor external support can long survive here in the absence of an effective system of criminal justice. Until all are protected by the law, until all are subject to the law, El Salvador will lack a fundamental prerequisite for a healthy society, and, I might add, for a healthy economy.

In the first two weeks of this month, at least 68 human beings were murdered in El Salvador under circumstances which are familiar to everyone here. Every day we receive new reports of disappearances under tragic circumstances. American citizens in El Salvador have been among the murdered, among the

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disappeared. Is it any wonder that much of the world is predisposed to believe the worst of a system which almost never brings to justice either those who perpetrate these acts or those who order them? The "Mafia" must be stopped. Your survival depends on it. The gorillas of this Mafia, every bit as much as the guerrillas of Morazan and Chalatenango, are destroying El Salvador.

The battle has been joined. Both the civilian and military authorities of the Government of El Salvador have spoken out unequivocally against the abuses of basic human rights. They have backed up their words with action. They have begun the process of bringing to justice those who commit crimes under whatever banner--no matter who they might be.

In spite of the fact that determined efforts have cut the number of deaths attributable to political violence to a third or less of what it was a few years ago, by no stretch of the imagination can current levels be considered acceptable by any civilized person.

Extremists of left and right continue to murder wantonly, apparently basing their despicable actions on rumor, ideological persuasion, hearsay, and personal animosity.

Common criminals are having a field day. There is no doubt that El Salvador's political agony provides cover for common thugs. Everyone here knows that kidnapping for criminal gain has been carried out under the guise of political action.

The problem exists at every step of the criminal justice process. Who among you is not intimidated by it?

Who dares to speak out when you witness a person being dragged off by "heavily armed men in civilian clothes" in the middle of the night? Who will bear witness to murder?

Where are sufficiently trained detectives to investigate the wave of crimes committed daily?

Are there anywhere near enough properly trained and rewarded prosecutors to deal with the violence in the society? ...as to make successful prosecution virtually impossible for any but a self-confessed criminal?

Are judges sufficiently protected and isolated so as to assure verdicts based neither on bribery nor on fear?

Can the prison system absorb and control those who should be convicted?

These are questions with which all civilized societies must deal, but it is sad to see a society in which the answers are so painfully and consistently inadequate.

If you are not convinced that I am talking about a fundamental and critical problem, consider these facts. Since 1979 perhaps as many as 30,000 Salvadorans have been killed illegally, that is, not in battle. Less than 1,500 cases of "crimes against the person", that is, homicide, assault, and battery, have been prosecuted before your courts. Most striking of all, there have been less than 200 convictions for these crimes.

This is El Salvador's problem. El Salvador must solve it. The United States can do some things to help. We, for instance, can and do insist on our legitimate right to assure that justice is done in the case of murdered American citizens. We hope that successful prosecution of these crimes will open the door for similar success in crimes involving Salvadoran citizens. That is why I believe that the successful prosecution of these cases is just as essential for the future of the Salvadoran criminal justice system as it is for the continuance of US assistance.

To further this cause we can provide the technical assistance of the FBI in using modern investigative techniques. We stand ready to provide assistance to the Government and courts of El Salvador in the reform of the criminal justice system. Personally, however, I believe needed assistance could better come from other Latin countries where a modernized Napoleonic Code applies. But all will come to naught unless the will exists in this country to make it happen, unless the will exists to punish those who are responsible regardless of their station in life.

Finally, as the representative of the United States in El Salvador, I can try to communicate as clearly as honestly as I can the sentiments of the American people, the Congress, and the Administration, on this subject. The message is simple. El Salvador must have substantial progress on bringing the murderers of our citizens, including those who ordered the murders, to justice; in advancing human rights; and controlling the abuses of some elements of the security forces. If not, the United States, despite our other interests and our commitment to the struggle against communism, could be forced to deny assistance to El Salvador.

Beyond all of this, a more effective justice system is essential to ending the war. Your government has announced that it is trying to develop a mechanism whereby those guerrillas who recognize the wrongness and hopelessness of

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their actions can lay down their arms and return to the democratic fold. This is a supremely difficult task. Years of destruction and killing are not forgotten overnight.

We in the United States know this. The bitterness of our Civil War, which left over 350,000 dead and almost that many wounded, continued for the better part of a century—even with an unconditional amnesty and full political participation for virtually every rebel.

Nevertheless, the fighting here will end someday. And when it does, those who lay down their arms must be able to do so with the knowledge that they will be fairly treated in accordance with the laws and procedures established by the elected representatives of the Salvadoran people.

In closing, I would like to commend to you some words spoken by a man at the head of a nation racked by armed rebellion; a man who, in spite of his loathing for armed force, used armed force to suppress that rebellion; a man who eventually died at the hands of a political assassin.

"With malice toward none, with charity for all; with firmness in the right, let us strive on to finish the work we are in; to bind the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations."

Appendix E

Press Communique Issued By The Salvadoran
Armed Forces on 9 January 1983

The Salvadoran Armed Forces hereby report that the commanders of the various military posts met to analyze the situation at military detachment No. 2 and reached the following conclusions:

1. This attitude is in open contradiction to the principles of discipline and obedience that must always be observed by members of the armed forces. It also constitutes a violation of the existing military code and endangers the intense efforts to achieve peace.
2. It is deplorable that such actions take place within the armed forces under the current circumstances, at a time when they are heroically fighting, along with their people, to defeat subversion and international terrorism.
3. The success obtained in the defense of the country's sovereignty and the Salvadoran people is the result of the collective effort of each and every member of the armed forces, who are patriotically defending the continuing democratic process as the legitimate goal of the Salvadoran people.
4. The principle of subordination and obedience to the President of the Republic and the Commander in Chief of the Armed Forces and to the rest of the high command remains unalterable within the established hierarchical order, thus reflecting the observance of the principles of legality, authority and discipline.
5. A commission will be appointed that will find a solution in accordance with the high interests of the armed institution and the Salvadoran people.

(Dated) San Salvador, 9 January 1983

(Signed) The Director of the Military Academy, the Director of CEFA (Armed Forces Studies Center), the Commander Armed Forces of the Quartermaster Corps, the Commander of the 2D Infantry Brigade, the Commander of the 4th Infantry Brigade, the Commander of the 4th Infantry Brigade, the Commander of Military Detachment No. 2, the Commander of Military Detachment No. 5, the Commander of Military Detachment No. 7, the Director of the Military Hospital, the Commander of the Armed Forces Arsenal, the Departmental Commander of La Libertad, the Commander of the third Infantry Brigade, the Commander of the fifth Infantry Brigade, the Commander of the Artillery Brigade, the Commander of Military Detachment No. 4, the Commander of Military Detachment No 6, the Commander of the Atlacatl

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Battalion, the Commander of the Gen Ramon Bellosa Battalion, the Commander of the Atonal Battalion, the Commander of the Cavalry regiment, the Commander of the National Navy, the Commander of the Center of telecommunications training of the Armed Forces, the Commander of the Armed Forces commando (commando) training center, the Commander in Chief of the training Center for Armed Forces Engineers, the National Guard Director General, the Treasury Police Director General and the National Police Director General.

APPENDIX F
AGRIARIAN REFORM STATUS REPORT
(page 1)

	Phase I	(not implemented) Phase II	Phase III	Total
1. Size of ownership holding subject to redistribution (hectares)	500+	100-500	all rented land	
2. Estimated number of holdings to be affected by the agrarian reform	328*	1,700	30,000	
3. Estimated amount of land to be redistributed (hectares)	224,326*	125,500	94,000	443,826
As a % of the country's 1,455,000 hectares of land in farms	15.42*	8.6%	6.5%	30.5%
4. Amount of land actually redistributed through December, 1963 (hectares)	224,326	0	62,824	287,150
As a % of the country's 1,455,000 hectares of land in farms	15.4%	0	4.3%	19.7%
5. Estimated number of small farmers to benefit from the reform	60,000**	N.A.	125,000**	185,000**
6. Actual number of farmers who have claimed land under the reform	29,755	0	39,344	69,099
As a % of the estimated target	49.6%	0	31%	37%
7. Number of provisional titles issued	0	0	36,674	
B. Number of final titles issued	22	0	408	

* actual figures

** original estimates, probably too high

LAC/CEN:01/83

APPENDIX E
1/
AGRIARIAN REFORM STATUS REPORT
(page 2)

PHASE III
(Decree 207)

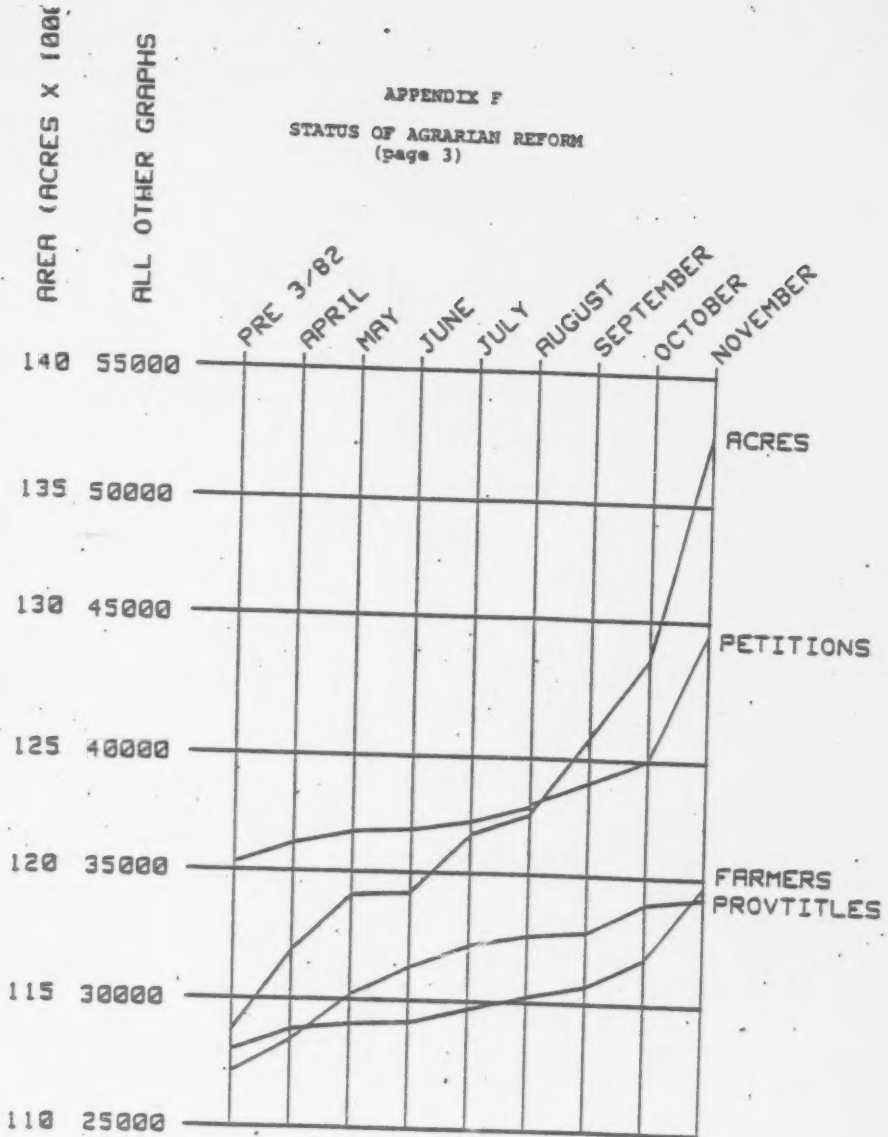
	Cumulative Thru MARCH 1982	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	Cumulative Thru DECEMBER
A. Number of small farmers who have filed petitions	28,123	678	451	101	344	577	649	1,144	2,828	4,440	39,344
B. Land area affected (hectares)	117,840	3,174	2,211	165	1,680	1,580	2,995	3,127	8,726	17,709	155,237
C. Title petitions filed	35,446	809	496	105	379	646	734	1,268	4,925	5,601	50,409
D. Provisional titles granted	27,215	1,354	1,646	1,225	909	399	204	1,198	263	261	34,674
E. Definitive titles granted	0	0	0	103	148	0	0	157	0	0	408
F. Property owners compensated	0	0	7	1	4	1	27	18	23	55	136
G. Number of farmers illegally evicted	-	-	-	-	-	2/ 4,682	72	9	26	2	4,791
H. Number of evicted farmers reinstated	-	-	-	-	2/ 2,138	193	95	4	3	99	2,532

1/ Based on COPS figures in monthly reporting cable.

2/ First time reported in monthly cable format.

LAC/CHH:01/83

APPENDIX F
STATUS OF AGRARIAN REFORM
(page 3)



APPENDIX C
AGRICULTURAL STATUS REPORT BY DEPARTMENT

NUMBER OF POTENTIAL APPLICATIONS, NUMBER OF APPLICATIONS FILED, AND PERCENTAGE BY DEPARTMENT AS OF DECEMBER 10, 1962.

Departments	1/ Potential Number	2/ Number of Applications as of 7/25/62	3/ % of the Department Potential	4/ Number of Applications as of 12/10/62	5/ % of the Departmental Potential
Ahuachapán	7,850	5,300	61	7,851	100
San José	10,750	6,250	58	8,643	80
Sanarate	7,800	5,500	70	5,954	76
Chalatenango	11,700	400	3	691	6
La Libertad	10,500	4,600	44	6,481	62
San Salvador	5,300	1,000	19	1,520	29
Cuscatlan	6,900	1,300	19	1,446	21
La Paz	7,000	1,300	27	2,093	30
Cabañas	9,000	1,100	12	1,300	13
San Vicente	7,250	1,250	17	1,473	20
Usulután	9,900	1,900	19	2,136	22
San Miguel	16,000	2,600	16	2,702	17
Morazan	6,700	1,400	21	1,600	24
La Unión	8,650	2,100	24	3,514	41
TOTAL	125,300	37,200	30	47,304	38

Source: 1/ FINATEA estimate 2/ FINATEA report

FINAL ACT
OF THE MEETING OF FOREIGN MINISTERS
OF COUNTRIES INTERESTED IN THE PROMOTION
OF DEMOCRACY IN CENTRAL AMERICA AND THE
CARIBBEAN

The representatives of the Governments of the Republics of Belize, Colombia, El Salvador, the United States of America, Honduras, Jamaica, and Costa Rica, and the observer representative of the Government of the Dominican Republic, convinced that direct dialogue among democratic countries is the appropriate way to review the situation in their states and, therefore, to search for solutions to common problems, met in San Jose, on October 4, 1982, represented as follows:

BELIZE

His Excellency George Price
Prime Minister and Minister of Foreign Affairs

COLOMBIA

His Excellency Rodrigo Lloreda Caicedo
Minister of Foreign Affairs

His Excellency Carlos Borda Mendoza
Ambassador of Colombia in Costa Rica

Ambassador Julio Londono
General Secretary of the Ministry of Foreign Affairs

Ambassador Luis Carlos Villegas
Under Secretary for Economic Affairs

Mr. Julio Riano Velandia
Deputy Chief of Protocol

EL SALVADOR

His Excellency Fidel Chavez Mena
Minister of Foreign Affairs

His Excellency Carlos Matamoros Guirola
Ambassador of El Salvador in Costa Rica

His Excellency Oscar Castro Araujo
Director General of Foreign Policy

Mr. Alvaro Menendez Leal
Director General of Culture and Communications

UNITED STATES OF AMERICA

His Excellency Thomas O. Enders

Assistant Secretary of State for Inter-American Affairs

His Excellency Francis Mc Neil

Ambassador of the United States in Costa Rica

ADVISERS

Mr. Arthur Giese

Deputy Director, Central American affairs

Mr. Ronald Godard

First Secretary, Embassy of the United States in Costa Rica

Mr. Scott Gudgeon

Legal Adviser, Department of State

Mr. Donald Barnes, Interpreter

HONDURAS

His Excellency Edgardo Paz Barnica

Minister of Foreign Affairs

His Excellency Ricardo Arturo Pineda Milla

Ambassador on Special Mission

His Excellency Jorge Roman Hernandez Alcerro
Ambassador on Special Mission

His Excellency Herminio Pineda B.
Charge d'affaires a.i. of Honduras in Costa Rica

JAMAICA

His Excellency Neville Gallimore
Minister of Foreign Affairs and Foreign Trade

His Excellency Louis Heron Boothe
Ambassador of Jamaica in Costa Rica

His Excellency Neville Clark
Consul General of Jamaica in Costa Rica

COSTA RICA

Mr. Fernando Volio Jimenez
Minister of Foreign Affairs and Worship

Mr. Ekhart Peters Seevers
Vice Minister of Foreign Affairs and Worship

Mr. Alvar Antillon Salazar
Senior Director General of the Ministry of Foreign Affairs and
Worship

DOMINICAN REPUBLIC

His Excellency Jose Marcos Iglesias Inigo
Ambassador of the Dominican Republic in Costa Rica

The opening session was held in San Jose at 9:30 a.m., and was attended by the President of the Republic of Costa Rica, Luis Alberto Monge, who delivered the inaugural address.

In order to have a moderator for the discussions, the meeting of Ministers unanimously elected Mr. Fernando Volio Jimenez, Minister of Foreign Affairs and Worship of Costa Rica, as Chairman.

The participants agreed on the following points as the final result of their deliberations:

1. They expressed their conviction that it is the ineludible task of governments that have been legitimized by the will of the people, expressed at the polls, to defend, promote, and develop a democratic, representative, pluralistic, and participatory system, and that the time has come to define the conditions that will permit the reestablishment of a lasting and stable peace in Central America;

2. They recognized the challenges facing the democratic institutions of our countries, and the unavoidable duty to face them firmly;

3. They likewise recognized that it is necessary and desirable to establish organizations to help maintain and improve democratic institutions;

4. They noted that democratic institutions, in addition to serving as a means of expressing the sovereignty of the people, should contribute to the strengthening of peace and solidarity among peoples and the promotion of economic development, freedom, and social justice;

5. They reaffirmed the fundamental importance of respect for international law and treaties as the basis of regional cooperation and security;

6. They stated that the maintenance of peace and democratic institutions requires respect for the fundamental values of human dignity emanating from the Supreme Being, and the elimination of existing conditions of social injustice;

7. They stressed the need for the prevention and solution of conflicts between states to be channeled through the mechanisms for peaceful settlement recognized by international law, and emphasized that it is the duty of governments to use such mechanisms and, if necessary, to create special mechanisms to achieve that end;

8. They noted that the current world economic crisis produces phenomena such as disproportionate foreign indebtedness, a deterioration of the international financial system, and an increasing imbalance in the terms of trade among states;

9. They considered that such phenomena result in unemployment, inflationary trends, serious financial problems, and political,

economic, and social conflicts which are exploited by totalitarianism for the purpose of destabilizing the democratic way of life and government;

10. They noted the objective enunciated this year by the Chiefs of State and Government on the occasion of the inauguration of the President of Honduras, Dr. Roberto Suazo Cordova, on January 27; of the President of Costa Rica, Mr. Luis Alberto Monge, on May 8; of the President of Colombia, Dr. Belisario Betancur, on August 7; of the President of the Dominican Republic, Dr. Salvador Jorge Blanco on August 16; and in the Joint Communiques of the Presidents of Costa Rica and El Salvador of June 17, of the Presidents of Honduras and El Salvador, of June 10, and of the Presidents of Costa Rica and Panama, of September 26, of this same year, and that such objectives point to the adoption of measures for the achievement of peace, democracy, security, development, freedom, and social justice.

THEY THEREFORE DECLARE:

I. Their faith in and support for the principles of representative, pluralistic, and participatory democracy which, when properly understood, constitutes a way of life, of thinking, and of acting which can accommodate within its scope different social and economic systems and structures having a common denominator: which is respect for life, for the security of the individual, for

freedom of thought, and for freedom of the press, as well as the right to work and to receive proper remuneration, the right to fair living conditions, to the free exercise of suffrage, and of other human, civil, political, economic, social, and cultural rights.

II. Their concern about the serious deterioration of the conditions of the present international economic order and international financial system, which gives rise to a process of destabilization, anguish, and fear, affecting, in particular, those countries that have a democratic system of government. In this regard, they appeal to the industrialized democratic countries to step up their cooperation with the democratic countries of the area by implementing bold and effective initiatives to strengthen the recovery and economic and social development efforts of the various interested countries in the area. As part of this cooperation, the initiative of the President of the United States of America with regard to the Caribbean Basin is especially urgent and should be encouraged and fully implemented as soon as possible. Likewise, those present recognize the economic cooperation and assistance efforts undertaken by the Governments of the Nassau Group: Canada, Colombia, Mexico, the United States, and Venezuela.

They support current efforts towards subregional economic integration, including the Central American Common Market and the Caribbean Community and point out the urgency of updating and improving those integration processes which are now in trouble in order to place them in an appropriate political, economic, juridical, and institutional framework.

III. Their conviction that, in order to promote regional peace and stability, it is necessary to support domestic political understandings that will lead to the establishment of democratic, pluralistic, and participatory systems; to the establishment of mechanisms for a continuing multilateral dialogue; to absolute respect for delimited and demarcated borders, in accordance with existing treaties, compliance with which is the proper way to prevent border disputes and incidents, observing, whenever applicable traditional lines of jurisdiction; to respect for the independence and territorial integrity of states; to the rejection of threats or the use of force to settle conflicts; to a halt to the arms race; and to the elimination, on the basis of full and effective reciprocity, of the external factors which hamper the consolidation of a stable and lasting peace.

In order to attain these objectives, it is essential that every country within and without the region take the following actions:

- a) Create and maintain truly democratic government institutions, based on the will of the people as expressed in free and regular elections, and founded on the principle that government is responsible to the people governed;
- b) Respect human rights, especially the right to life and to personal integrity, and the fundamental freedoms, such as freedom of speech, freedom of assembly, and religious freedom, as well as the right to organize political parties, labor unions, and other groups and associations;

- c) Promote national reconciliation where there have been deep divisions in society through the broadening of opportunities for participation within the framework of democratic processes and institutions;
- d) Respect the principle of non-intervention in the internal affairs of states, and the right of peoples to self-determination;
- e) Prevent the use of their territories for the support, supply, training, or command of terrorist or subversive elements in other states, end all traffic in arms and supplies, and refrain from providing any direct or indirect assistance to terrorist, subversive, or other activities aimed at the violent overthrow of the governments of other states;
- f) Limit arms and the size of military and security forces to the levels that are strictly necessary for the maintenance of public order and national defense;
- g) Provide for international surveillance and supervision of all ports of entry, borders, and other strategic areas under reciprocal and fully verifiable arrangements;
- h) On the basis of full and effective reciprocity, withdraw all foreign military and security advisers and forces from the Central American area, and ban the importation of heavy weapons of manifest offensive capability through guaranteed means of verification.

The preceding actions represent the essential framework that must be established in each State in order to promote regional peace and stability;

The signing countries call on all the peoples and governments of the region to embrace and implement these principles and conditions as the basis for the improvement of democracy and the building of a lasting peace.

They note with satisfaction the efforts being made in that direction, and deem that the achievement of these objectives may be reached more fully through the reestablishment of the rule of law and the organization of election processes that will guarantee full participation of the people, without any discrimination whatsoever.

They resolve:

IV. To create a democratic organization to provide development assistance and advisory services for elections, the purpose of which organization will be to maintain the electoral system and to develop, strengthen, and stimulate its utilization in the Inter-American area, providing advice to countries that request it about its practice and implementation. The organization will operate either autonomously, sponsored by the countries represented in the meeting and by other interested countries, or as a section or branch of the Inter-American Institute of Human Rights, since suffrage is an essential part of the theory and practice of human rights.

To request the Minister of Foreign Affairs and Worship of Costa Rica, Mr. Fernando Volio Fernandez, to prepare an appropriate document, containing the comments of the participants in this meeting and of representatives of other democratic countries and to circulate it among them and implement it as soon as possible.

V. Lastly, they agree to participate in a Forum for Peace and Democracy, the purpose of which will be to contribute to the implementation of the actions and the attainment of the objectives contained in this document, and, within the framework of this declaration, to study the regional crisis and analyze the various peace proposals or initiatives aimed at solving it. The Forum may be broadened by the inclusion of the collaboration of other democratic States.

The Forum may entrust specific tasks to representatives of given participating countries, who will report on the results; and will transmit the final act of this meeting, so that comments and opinions deemed advisable, may be presented to the Forum.

The representatives requested the Minister of Foreign Affairs and Worship of Costa Rica, on behalf of the participating governments, to transmit this declaration to the governments of the region and other interested governments, and to obtain their views on the principles and conditions for peace that it contains.

They agreed to convene a new meeting as soon as possible, in order to evaluate the development of the objectives of the declaration.

VII. The Plenary Session of this meeting of Foreign Ministers noted with pleasure the presence of Panama and the Dominican Republic as observers.

The representatives expressed their appreciation to the Government of the Republic of Costa Rica for the courtesies it extended to them, which made possible the successful completion of their deliberations.

Signed at San Jose, Republic of Costa Rica, on October 4, 1982.

For Belize

For Colombia

For El Salvador

For the United States of America

For Honduras

For Jamaica

For Costa Rica

True copy of the original.

Alvar Antillon S.

Director General of the Ministry

of Foreign Affairs and

Worship of Costa Rica

For the Dominican Republic

The CHAIRMAN. Thank you very much.
Secretary Abrams, do you have any comments?

**STATEMENT OF HON. ELLIOTT ABRAMS, ASSISTANT SECRETARY
FOR HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, DEPART-
MENT OF STATE**

Mr. ABRAMS. Thank you, Mr. Chairman. I would like to submit my statement for the record and just make one brief remark.

There are, I think, two sorts of battles under way in El Salvador today: the battle for democracy on the one hand and for human rights, and the battle against the guerrillas. And in a sense, our discussions of human rights and war and politics in El Salvador revolve around the relationship between those two struggles. For after all, the certification before you today permits military assistance but does not compel it. What compels military aid, or I think should, is a conclusion not only that military aid helps in the struggle against the guerrillas but that that struggle is essential in order to win the battle for democracy.

Many Americans argue to the contrary and, Mr. Chairman and Senator Pell, you mentioned the fact that both of your offices have been occupied by Americans feeling very passionately to the contrary. They argue that our military aid actually harms the development of peace and democracy in El Salvador. But those who favor ending military assistance I think must be asked would violence and death decrease or increase if we withdraw our help? What would the impact be on the chances for peace and democracy in El Salvador?

Similarly, those who favor negotiation with the guerrillas must ask what would the impact of such negotiations be on the other battle, the battle for the development of democracy in El Salvador? What, after all, do the guerrillas think about free elections and about a parliament and about human rights?

More important even than asking which countries are their sponsors, we must ask which countries are their models? Negotiations can, of course, strengthen democracy in El Salvador if they are aimed at insisting that those who want power submit themselves under fair conditions to the voters, use democratic means to seek power, and to integrate themselves into the developing political system.

But negotiations can destroy the new institutions of democracy if they are offered as an alternative to democracy, an alternative to the elections. So once again, the question, I think, is what is the relationship between these two battles, the battle for democratic reform and the battle against the guerrillas?

I do not believe that we can abandon the one struggle aimed at resisting the guerrillas who seek military domination and who are contemptuous of democracy without abandoning the struggle for human rights and democracy as well. Thank you.

[Mr. Abrams' prepared statement follows:]

PREPARED STATEMENT OF HON. ELLIOTT ABRAMS

Mr. Chairman and Members of the Committee, I welcome this opportunity to appear before you today to discuss the human rights situation in El Salvador. As the information we have submitted to the committee indicates, we believe

the human rights situation in El Salvador has improved over the last 6 months. Nevertheless, it is still the case that political violence is extraordinarily widespread in El Salvador. Innocent civilians are losing their lives there. This being the case, the human rights situation in El Salvador necessarily confronts us with a troubling question: in view of the human rights violations occurring there, what is the justification for American military assistance to the Government of El Salvador? Why not cut off this military assistance, and disassociate ourselves completely from the human rights violations in that country?

In establishing the certification process, Congress has set certain preconditions for our military assistance. We believe that these conditions have been met. The behavior of the Salvadoran armed forces is better than it was 6 or 7 months ago; the overall level of violence continues to decline; the land reform program is proceeding; political reform is underway. But these conditions of certification, though they permit aid, do not compel it. I hope we will look today not only at the narrowly defined terms of the certification but beyond those terms to the overall situation in El Salvador. We must do so, to achieve any coherent view of American interests in that country.

El Salvador is a country with little tradition of moderate, democratic, reformist, politics, but with a long history of poverty, repression, military rule, violence, and fear. Today there are two realities which exist side by side in El Salvador: violence, and reform. It is noteworthy that the conditions for certification which you have set require us to analyze both.

The violence has destroyed a substantial portion of El Salvador's economy, has created hundreds of thousands of displaced persons and refugees, and has largely subverted the system of law and justice in El Salvador.

But, side by side with this record of violence is another reality: reform. For El Salvador is a country which has undertaken an extraordinary program of economic reforms. The data we have presented make it quite clear that these reforms continue, and that efforts to derail them have failed. Moreover, El Salvador is beginning to try democratic politics. With vast public support, an election was held last March, and a Constituent Assembly now sits debating the country's future and writing a new Constitution. Next year there will be a presidential election. El Salvador is beginning what is always an extremely difficult process: the transition to democracy. The habits of moderation, compromise, and submission to law are not easily learned, and they will not be easily learned in El Salvador. The progress already made is remarkable. El Salvador now has a civilian president and cabinet and a vigorous political party structure.

The ultimate solution to the crisis of violence in El Salvador is this process of building democratic institutions. The guerrillas will not be defeated in one great battle some day; rather, they will be defeated because the process of political and economic reform makes them utterly irrelevant to the future of El Salvador.

Our purpose in El Salvador is twofold: to encourage the process of reform, and to assist the army in fighting the guerrillas. For if one thing is certain in El Salvador, it is this: guerrillas armed and led by communists who are allied with Moscow, Havana, and Managua are not fighting for human rights and are not fighting for reform. They are fighting for power, and we know from the models they seek to emulate that they mean power for themselves, power never to be shared with the people of El Salvador.

It is not certain that the Government of El Salvador and the people of El Salvador will win this struggle for peace and for reform. On the extreme left and extreme right people with radically different views share a common detestation of democracy and a common determination to block El Salvador's progress toward reform and peace. But it is quite clear that their aims do not have the support of the vast majority of the people of El Salvador. Our policy is to help the people of El Salvador win their struggle. Because of the strength of the right and left wing extremists, and the outside support the guerrillas receive from various Marxist states, reform in El Salvador depends in no small part on our willingness to help.

It is a task which many Americans resist because it enmeshes us in the violent, sometimes obscure, always complex, life of a small and poor society at the most difficult stage in its history. All of us wish sometimes we could turn from these kinds of involvements in regions of turmoil.

But let us face the fact that we cannot, if we take seriously our responsibility to promote democracy and respect for human rights.

Those who seek peaceful change in El Salvador look to us because they know that their cause may well be doomed without us, without our help. We can of course turn away, but let us not be under any illusions about the results of that action. It would lead to more and more violence in El Salvador. We have a responsibility, if we take seriously a commitment to help the cause of democracy in El Salvador, to give the Salvadoran people the help they need. If we refuse, with the full knowledge that our refusal will strengthen extremists of the left and right, let us at least acknowledge that we act out of a desire to avoid political controversy. But let us not delude ourselves into thinking that such an act would have anything to do with advancing the cause of human rights in El Salvador, which is the common goal that brings us together here today.

The CHAIRMAN. Secretary Abrams, would you want to add to the five expectations that Secretary Enders outlined—and I concur with all of those expectations that we would hope would come from this committee as a result of these hearings—and a sixth one as well, that would emphasize greater emphasis upon human rights, that we expect to see and would hope to see further progress in that area? That is absolutely essential.

Mr. ABRAMS. Yes.

The CHAIRMAN. Thank you very much.

Mr. Sanchez, would you like to comment? By the way, all of you have submitted testimony, and the full testimony will be incorporated in the record.

STATEMENT OF HON. NESTOR D. SANCHEZ, DEPUTY ASSISTANT SECRETARY FOR INTER-AMERICAN AFFAIRS, DEPARTMENT OF DEFENSE

Mr. SANCHEZ. Thank you, Mr. Chairman. I do welcome the opportunity to appear before this committee in support of certification of El Salvador for continuing security assistance. My remarks will be focused on the status of the armed forces.

The CHAIRMAN. And I should state for the record that Mr. Sanchez is Deputy Assistant Secretary of Defense for Inter-American Affairs. Go right ahead.

Mr. SANCHEZ. Thank you, sir.

During the last 6 months the Salvadoran Armed Forces have continued to play a key role in supporting and implementing the reforms of the October 1979 revolution. The armed forces gained respect for its performance during the March 1982 elections, but that high level of performance has not been sustained during the interim period. The armed forces have been in a reactive mode, taking the initiative primarily in the form of large-scale sweep operations that eject the guerrillas from areas temporarily.

The question then must be asked why has the military failed to maintain the performance demonstrated during the elections? We believe that by acting as the guarantor of the political, economic, and social reforms, the high command of the armed forces has been distracted from the principal task of fighting the guerrillas. In essence, the progress in implementing democratic reforms has been at the expense of active pursuit of the war.

At the very time the high command should have been adjusting its tactics to the guerrilla threat, it has instead found itself increasingly drawn into the political infighting that is characteristic of an embryonic democracy.

The military has been the arbiter and stabilizing influence among the different political actors vying for political advantage. For example, when the rightist elements in the constituent assembly attempted to slow down the agrarian reforms, the military acted quickly to protect the reforms. Moreover, they returned to their land those campesinos who had wrongfully been evicted.

The diversion of the attention of the high command from military to domestic political matters has been recognized by the Salvadoran field commanders who have criticized their superiors for failure to prosecute the war. This view surfaced during the recent conflict between the Minister of Defense and the military commander in the Department of Cabanas. While the criticism of the high command's conduct of the war may have some validity, the action of the department commander was considered by all commanders as an act of insubordination.

The concern of the military is the precedent that this act of insubordination might establish and the particular damage to the institution. Although the incident in the Department of Cabanas was not a welcome development, the resolution of this problem by President Magaña in his capacity as commander in chief of the armed forces is a first step in the military adherence to Presidential and civilian control.

Despite fundamental problems, many actions of the Salvadoran military leadership demonstrate its attempts to build professional forces to defend democratic institutions. In September the armed forces conducted a media campaign to make military personnel as well as the general public aware of the need to observe human rights. The minister of defense has on many occasions encouraged the Salvadorans to report abuses by commanders and civil defense personnel. In October the Minister met with over 200 local commanders from all of the departments. He delivered a clear warning to the commanders to stay out of politics and respect human rights.

The armed forces have reported that 80 percent of approximately 33,000 active-duty personnel in the military and security forces have received instruction on human rights from the International Committee of the Red Cross. In addition, virtually all military training provided by U.S. Armed Forces personnel to the Salvadorans, both in country and out of country, includes instruction on the proper treatment of prisoners and the civilian population. Written orders for military operations now routinely contain specific instructions on the humane treatment of noncombatants and the need to take prisoners.

Although abuses continue to be reported, the results of these efforts by the military leaders, the U.S. trainers, the Red Cross and others have been encouraging. There have been at least six major multibattalion operations since last July, and no reports of widespread abuses have been associated with these large-scale operations. As of January 1983 about 140 regular military personnel were under detention for abuses of authority. Sixteen civil defense commanders as well as many civil defense personnel have been jailed.

Although the number of prisoners taken during the military operations is not large, the Salvadorans are at least now taking prisoners. The treatment of prisoners has reportedly been good. In August news-

papers reported that five extremists were captured and three surrendered. One of the captured was a wounded 14-year-old boy who was flown by helicopter to a nearby hospital. News photos showed him receiving medical treatment. This was the first time that the armed forces had publicized the capture and humane treatment of guerrillas during a combat operation.

Senator PELL. How old was the soldier?

Mr. SANCHEZ. Fourteen years old. Military zone commanders directly responsible for prosecuting the war to an increasing degree speak and act in a manner which indicates that they understand that gaining the support of the civilian population is essential to winning the war. Although the Salvadoran Armed Forces currently have no formal civic action program, they are planning to initiate one as soon as resources are available. In the meantime, many units in the field provide medical care to the local populace. Engineer units likewise engage in well digging and roadbuilding. During the October floods the armed forces provided disaster relief to areas severely affected.

Armed forces personnel have routinely furnished security for workmen repairing structures damaged by the guerrillas. The military has also worked closely with other government agencies in providing assistance to about 250,000 people displaced by the fighting.

Although there is currently no formal national amnesty program, we have been informed that a decree is ready to be promulgated. The Minister of Defense has publicly called for the guerrillas to lay down their arms and rejoin Salvadoran society. Between 200 and 300 guerrillas have defected, have been protected by the military, and subsequently resettled in projects administered by the military.

Let me turn now to the impact U.S. security assistance has had on the Salvadoran Armed Forces. During the last 2 years, we have trained Salvadoran units and individuals incountry through mobile training teams and out of country in both the United States and Panama. A central focus of our training effort has been to inculcate into the Salvadoran military the need to use force judiciously and conduct military operations in such a way as to gain the willing cooperation of the populace. El Salvador, as you know, is a country with a violent heritage and a long history of conflict between the rural people and elements of the country's security forces. Our training, in addition to imparting the tactical and technical skills needed to conduct a successful counter insurgency, also seeks to drive home the lesson that guerrillas can only be defeated by an army with popular support. The experience of the past year suggests that this point has been accepted, and that the military, especially those individuals and units that have received U.S. training have improved markedly in their cooperation with the civilian sectors.

Perhaps the most visible examples of the impact of U.S. security assistance are the three U.S.-trained-and-equipped, quick-reaction battalions. These battalions, one of which we trained at Fort Bragg, are the mainstays of the armed forces, and are feared the most by guerrilla commanders. One of the most serious deficiencies of the military was the lack of sufficient qualified platoon leaders due to the rapid expansion of the armed forces to combat the externally supported insurgency. In 1982, 477 young men were trained at Fort Benning, and they have acquitted themselves well in the field. U.S.-supplied

aircraft have also made a difference. The UH-1H helicopters and transport aircraft have increased mobility, enabling the government to move troops rapidly. The A-37 light attack aircraft, coupled with the O2 spotter planes, have added a new dimension to the Salvadoran Armed Forces.

Due to emphasis on coordinated air-ground operations, air strikes from the A-37 aircraft have been effective against the guerrillas, especially in dislodging them from their base camps and fortified positions. The small Salvadoran Navy has finally come of age, and is operating effectively in the Gulf of Fonseca, and on the west coast of El Salvador. Significant progress has been achieved in the armed forces' ability to plan and support multiunit, joint, and simultaneous operations. The addition of secure communications equipment has allowed coordination of military activities without providing valuable information to the guerrillas. At the same time, improvements in tactical intelligence, and especially its exploitation, have contributed to recent Salvadoran successes.

Despite the progress made toward increasing force capability, much more needs to be done. Logistics continues to be a problem limiting the time units can remain in the field. Small unit and night operations should be emphasized to a greater degree. Major deficiencies are evident in the lack of properly trained middle level combat leaders and experienced staff officers at department, brigade, and battalion levels. The staff deficiencies are more critical in the technical areas—logistics, communications, transportation, and maintenance. Operationally, the armed forces lack sufficient force to secure and hold enemy-infested areas and are short on mobility assets and firepower.

We would like to see a more dynamic approach, characterized by a program with definite timetables, goals, and objectives. There is a need for a campaign plan for prosecuting the war. We also believe that emphasis on small unit operations, patrolling, and continuous presence would produce more favorable results. Additional quick-reaction battalions and airlift would enable the military to take more initiatives.

In fact, the Salvadorans have requested that we train a fourth quick-reaction battalion. We have been unable to respond to this request due to a limitation in funding. Insufficient resources have been an impediment to the further enhancement of force capabilities.

A concept we are currently reviewing is the assignment of small mobile training teams to the brigade and department level. These teams would train middle level commanders to insure that military operations are properly planned, coordinated, and consistent with an overall campaign plan. Such training would also achieve a more efficient and effective allocation of limited resources.

Mr. Chairman, one thing is certain. A firm commitment from the United States to continue security assistance to El Salvador is vital. We believe that the progress made during the last 6 months is promising and merits our continued support to the Government and Armed Forces of El Salvador.

It was the armed forces that carried out the revolution of October 1979, and implemented the political, social, and economic reforms that characterized the revolution. It was the armed forces that made possible the first free elections in 40 years. The military remains com-

mitted to representative government—in stark contrast to the increasingly autocratic regime in Nicaragua. When earlier this year it appeared that there might be a slowdown in the agrarian reforms, it was the armed forces that let it be known in no uncertain terms that there would be no backsliding.

In summary, U.S. security assistance has provided the wherewithal for the armed forces to act as the shield behind which the political, social, and economic reforms have progressed. All our soundings from El Salvador indicate that the military remains committed to the reforms and to the democratic process. The Salvadoran Armed Forces will likely make moderate progress in 1983 against the guerrillas, who will probably continue protracted war tactics. The degree of progress of the armed forces in prosecuting the war will depend on their ability to focus their military resources on the guerrilla force while sustaining reform efforts. It is in the interest, I believe, of the United States to provide the critically needed security assistance to enable El Salvador to continue developing a representative form of government and improving the social and economic conditions which are the root causes of insurgencies.

Thank you, Mr. Chairman.

The CHAIRMAN. Secretary Sanchez, I think that is the most complete and comprehensive statement that this committee has yet had as to the role of the military, and I find it encouraging and extremely constructive.

General Nutting, would you care to amplify and make some comments of your own? And possibly both you and Secretary Sanchez could comment on the role of the certification process, whether it has impeded or assisted you in achieving your objectives and goals.

**STATEMENT OF LT. GEN. WALLACE H. NUTTING, U.S. ARMY,
COMMANDER IN CHIEF, U.S. SOUTHERN COMMAND, PANAMA**

General NUTTING. Thank you, Mr. Chairman.

I have no prepared statement. However, I do welcome this opportunity to respond to the interests of the committee, particularly with respect to the role that the U.S. military does and might play.

I would like to recognize that my responsibilities extend throughout Central and South America, and I recognize that the certification process and the interest of the committee now focus properly on the situation in El Salvador. I welcome the opportunity to say that I support 100 percent from my perspective the information as it is portrayed in the certification document, and I certainly support the statements made here this morning by my colleagues.

I believe because of the breadth of my responsibilities, that it is important to view the situation in El Salvador within the broader regional context of events in Central and South America. Secretary Enders certainly has well described U.S. interest in El Salvador and the Caribbean Basin more broadly.

I think it is also important today to recognize that this certification is being viewed against a very severe financial crisis throughout Latin America that somewhat complicates the whole problem. From my perspective, I see in recent years a shift in the security equation in the

region that I think is important to the United States, and that can be described, first of all, perhaps, by concern for the conditions that exist, particularly in Central America.

That, as I tried to convey to the committee when we testified earlier on certification, is the most difficult, perhaps the most pressing problem that we face, the problem of trying to assist improvement in social and economic conditions. But the security equation also has to be viewed now against substantial unconventional guerrilla force structure that exists in Central America, the base structure, and the logistic system that feeds it. That unconventional force structure has to be viewed against the conventional military forces and the base structure and the potential for further development of that conventional military capability in the Caribbean Basin.

The challenge to U.S. interests, I believe, is certainly a multidimensional one, far more than military, which makes it complex. I think a similar response across all the elements of national activity are required.

And finally, one more regional point. I think certification in El Salvador should be viewed against what can be described as a broad trend to democracy throughout Latin America. I can name 8, 10, or 12 nations where in recent years another revolution has taken place. It has been described as the real revolution in Latin America. It has found military institutions for the first time in their history recognizing that reform must be accomplished, and they have stepped aside, supported free elections, and now support civilian, properly elected governments in office. That trend is in our interest, and certainly must be supported.

With respect to the situation in El Salvador, I would agree with Congressman Crane that we are coping with societal conditions that are embedded over 400 or 500 years of experience, and it is not realistic to expect major change overnight, as much as we might hope for it. I think it is important to recognize the commitment to reform on the part of the military institutions in El Salvador, which was demonstrated when they replaced the former government, which was repressive, on October 15, 1979, launched the reform program to which they have remained committed, and that has been demonstrated in a number of ways, as described by Secretary Sanchez.

Their intent, I think, is very clear. It is somewhat amazing to me at this moment in the certification process to recognize the progress that they have made, given the extent and the depth of the challenge they face and the U.S. support that they are receiving in response to that challenge.

The military role in that response certainly is not of primary importance, but I think it is of inescapable importance in helping to restore the climate of public order and security so that additional progress in the political, social, and economic areas can be achieved.

The U.S. military role in this whole process, in fact, is not major. I read in the press about the U.S.-trained El Salvadoran Armed Forces, and I would just like to observe that the assistance that we have provided really has touched something around 10 percent of the Armed Forces of El Salvador and, of course, by law, we have not had any contact in a professional training sense with the public security forces.

The training assistance that has been provided, I think, has made a difference, as described by Secretary Sanchez, but it has been applied only to a small part of the force. The material aid that we have provided has made a difference, and I would say all together that that assistance has had a large role in forestalling the imposition of a Marxist government in San Salvador.

The major portion of the military assistance has been applied in the past year and a half during the certification process to expanding the force structure of the Salvadoran Armed Forces. Their principal deficiency was, and I think remains, trained military leadership, and we have had only a modest impact in that area, as described by Secretary Sanchez.

I think the challenge that faces us now is perhaps not so much expanding force structure, although that is necessary to cope with guerilla capabilities as they exist today, but it is also in trying to help improve the quality of performance of the Salvadoran Armed Forces so that they can indeed begin better to exert the kind of positive control over their activities at all levels that the certification process seeks.

I personally believe that the certification process is a discipline that is helpful in reviewing where we are from time to time and perhaps in determining better where we can go to assist in this extremely important effort to achieve a democratic government in El Salvador. This effort is being watched very closely by all the rest of Latin America, an area that is bound to be of increasing importance to U.S. interests in the future.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, General Nutting, very much indeed for your appearance. I recall vividly last time was extraordinarily helpful to us, and it is today.

Secretary Enders, you have indicated that, and I think we have had pretty much agreement, that the certification process has really been instrumental in helping bring us toward our goals, but you have indicated that it does sometimes ask the wrong questions, and it sets unrealistic expectations about what can be accomplished in the short run in El Salvador.

Maybe you are saying we ought to modify the procedure on certification somehow. Can you give us some of the right questions we ought to be asking in the certification, and would you concur that it has given Ambassador Hinton the ability to press for the reforms which do seem to constitute a part of U.S. policy toward El Salvador, are a part of our policy?

And you have shown the remarkable progress that has been made on each of those criteria, and I think the progress is steady and in the right direction, but are there other modifications you suggest in certification that would be helpful to us?

Ambassador ENDERS. I would agree with what you said about the utility of certification as an instrument. I think it really has helped us move toward the goals. It had some side effects.

Now, for example, during the fall, when an insurgent offensive occurred in October, the military hesitated to respond, and they hesitated to respond in considerable part because they were uncertain as to whether there was going to be any more military assistance from

the United States, and they were not sure that if they went out on campaign immediately, that it wouldn't come back and find that they had used up whatever munitions they had and there wouldn't be any more.

Now, this I don't think was an accurate reading of the United States at the time, given the progress that had been achieved, but was a very widespread view. That was significant, because the failure of the Salvadoran Armed Forces to respond very vigorously in October and November, or rather their tardy response, permitted the insurgents to expand somewhat their area of control, and that is one of the things that led to the relatively high level of insurgent activity right at the moment coming out a little further than it has in the past.

Now, that is the situation, Mr. Chairman, in which we were sort of saying, here is our budget, it is so much. Actually, it is rather small now, under the continuing resolution, \$25 million in military assistance. Here is our budget. We may take it away from you at some point. You can't fine tune that, and you can't focus it on the individual issues that you want in order to move ahead.

Now, for example, it is very hard to focus that right on the Peace Commission, which I think both of us agree is an important step forward.

I ask myself, is there some way in which you can say, here is a certain minimum of assistance, military assistance that we are prepared to give you, but we are not going to give you more, and we have a larger amount that we could give you, and think you could use effectively, but we are not going to give you more unless you perform the following kinds of acts in the following ways and use it much more precisely and much more on a week to week or month to month basis.

I don't know how we could organize that. I do think that the most effective message that was sent overall in this process to the Salvadorans did come from this committee room last spring on land reform. I think it was probably more effective by the directness of it than could have been possible under a certification of the content.

So, can it be fine tuned? And is there some way in which you can get into the 180-day period and do it on a case by case basis?

—The CHAIRMAN. Well, you ask a question which is a difficult one. It was the question that really Jose Napoleon Duarte put to us when he agreed verbally with us in committee that conditions can be put down, and that he shared the same goals we had. But, by the next morning I had a rush letter sent to me saying, "No, I withdraw that. Do not have those in the law. Let us have an understanding—but then just have a handshake on it." This is as I compared it on the floor; we are protecting the taxpayers who are bankers being asked to make a loan. The Salvadorans were saying: "Let us not put anything in writing and go through all that, you know, about conditions I have to meet on the repayment of this loan."

Now, are you saying that we should be as bankers, and we are, after all, being asked to give this assistance to them, that we should say, here is how much you get, no matter what you do, but if you really want more of a bank loan, then we will have to have conditions on it?

I think the choice of this committee is that we should have conditions on all of it, and make it very clear so there is no equivocation

about it whatsoever that they have to make progress toward developing a stable government, and that is what we did not do in Vietnam effectively. We never did. We never, ever had the position of a banker who could talk turkey, and see that those conditions were met.

Ambassador ENDERS. After all, you have control year to year on whether or not there is going to be any assistance, as has been pointed out here. I think the question is, can there be a control from month to month, and how can you avoid circumstances in which we may end up, without wishing to do, in paralyzing that Government militarily, and if we paralyze it militarily, we will end up by paralyzing it politically.

And so I think there has to be some greater element of flexibility there. I am not suggesting that you change the basic conditionality of our assistance, and as you know, we support those conditions, as you do.

The CHAIRMAN. Secretary Abrams, you have frequently said that the certification asks the wrong questions, and again, I would like to put the same question to you. What are some of the right questions that we should be asking for?

You have also suggested that we really look at violence from the left, and not just from the right, and I certainly concur, and our problem is, the left has never asked us to be the banker, nor have we ever offered. In fact, we are doing everything we can to cut off their supplies. We have no leverage whatsoever with them, other than to do everything we can to undercut their tactics.

We abhor what has been done by the left, and I cannot conceive of that society, if it were taken over and controlled by that bunch of thugs and gangsters and murderers, as they have demonstrated themselves to be, but what would you suggest we do now with the government itself, to ask, continue to ask more of the right questions of them, to move us in the direction that we certainly share?

Mr. ABRAMS. Well, Mr. Chairman, I think the certification has, in a way, in the ways we have been discussing, has been helpful in El Salvador in giving us leverage, and unhelpful in the United States in the sense that I think it has tended to deform the nature of our debate, as I said before, by getting us to concentrate on a few questions.

For example, we have tended to talk about exactly and precisely how many hectares are in which phase of the land reform program, and we have not asked questions like, insofar as we can make it out, what are the views of the people of El Salvador? Do they seem to be supporting the guerrillas? Or more this year than last year? What is the level of support for the guerrillas?

I do not think we have asked that question enough. I do not think we have asked the question enough about the impact of different potential outcomes on the United States and on El Salvador. For example, your very strong statement just now on the impact of a guerrilla victory, I think, has not received enough attention. That issue has not received enough attention.

What would be the impact on U.S. interests and on conditions in El Salvador were we to leave and were the guerrillas to come to power? What would be the impact in fact if we were to leave, and how would the right and left in El Salvador react? And more generally, what are U.S. interests in El Salvador?

I think we focused in on a lot of narrow and almost mathematical issues, and have not given enough attention to broader issues of U.S. interests.

The CHAIRMAN. I would like to come back in our second round to the four disappointments I have expressed, to get your reaction to those four areas where I do not think enough progress has been made. But I would like to yield now to Senator Pell.

Senator PELL. Thank you, Mr. Chairman. Mr. Chairman, on behalf of Senator Sarbanes, I would ask that the summary of the report of the Faculty for Human Rights in El Salvador and Central America, be inserted in the record.

The CHAIRMAN. It will be inserted at the appropriate spot. [See page 104.]

Senator PELL. Thank you very much. Secretary Enders, you mentioned that what happened in El Salvador is very important in Mexico. You mentioned that in your first paragraph. But then, why is it that Mexico is pursuing such a very different course than we are, based on the idea of a negotiated settlement of the conflict?

Ambassador ENDERS. Mexico has traditionally had its own concerns and interests in Central America. It has not traditionally, in fact, been very close to Central American countries on the whole.

I think that the question of what Mexico does or does not do and how it reads its interests is obviously different from how we read ours. But we are concerned with what would happen if there were, in fact, a substantial momentum of revolutionary activity in the Isthmus.

I do not wish to speak for the Mexicans; they speak for themselves. They regard themselves as a revolutionary government themselves.

Senator PELL. We used to, too.

Ambassador ENDERS. Indeed. I think that the question as to whether, in fact, you can, by co-opting the revolutions, get them to stay in place or whether they move is a fundamental issue which we have all looked at. I think we have found, in the case of Nicaragua, that it does not work.

Senator PELL. I have been struck in my own conversations with the Mexican Foreign Minister, from what I understand of their position, they have a stake in the stability of Central America, perhaps even larger than we do because they are closer to it geographically. And yet, their policies seem very different from ours. And I wonder if we could learn a little bit from them, or do you think they should learn from us?

Ambassador ENDERS. Well, we have been in very close touch with the Mexicans and will remain in very close touch with the Mexicans.

We had a very extensive dialog with them during the end of the last Sexenio, and will have perhaps even closer dialog with the Mexicans during this period. Exactly what the Mexican proposals are for Central America at this point are not at all clear, Senator.

Senator PELL. I think the essential one is for mutual negotiation to take place between the different sides. But I am glad that you are in close touch with them and look forward to a followup in this regard.

Ambassador ENDERS. We would like to see, in fact, a regional focus adopted by all the countries of the area, and thinking that each of these conflicts is related to the other and that you have looked at how

to deal with the Nicaraguan issue and the El Salvador issue and maybe the Guatemalan issue together, because they all impact on each other.

So far, Mexico has looked at only one or the other in rather specific aspects of it, occasionally, it seems to us, really picking up an individual force here, or a client state there, and just supporting that rather than looking at the whole. We hope that Mexico will now look more broadly.

Senator PELL. I was struck by the chart showing the decline in the killings, and I am wondering if one of the reasons for that may be that they have run out of Christian Democratic mayors and political leaders to kill.

Between January and September 1982 there were nine Christian Democratic mayors killed, and I was wondering what your reaction would be to the thought that perhaps there are no more political leaders willing to raise their heads in opposition in El Salvador and take the risk.

Ambassador ENDERS. I think if you ask that of the Christian Democrats they will tell you that you are wrong, Senator.

Senator PELL. I am glad to hear it.

Ambassador ENDERS. There is a very vigorous group of Christian Democratic mayors and others, and in fact, the political life of the country is astonishing for its ability to attract people to run for political office, which is clearly very dangerous. I think that is simply not true.

Senator PELL. I must say I admire our fellow politicians down there. I can think of some countries where they might have run out of candidates who were willing to stick their heads up to be shot at. When you have nine mayors who get killed in 1 year, then that is a pretty bad record I think.

Ambassador ENDERS. I think it is quite striking recently that we have found that threats have been apparently used in the constituent assembly, and that has not deterred them from standing up to each other.

But I think what has happened here, Senator, is that what we had before was not a campaign by the government against its citizens. It was anarchy, and that anarchy is being brought under control partly because the members of the security forces that, among others, participated in it are gradually being deterred or stopped or persuaded not to, and also because in fact, the government has been successful in asserting its authority over the cities and the countryside.

Senator PELL. I agree with you. It is a brave group of men, brave politicians.

As I said earlier, I was struck by the casualness of violence there.

Ambassador ENDERS. Well now, let me say that everybody who has been recently to El Salvador or those members of our Embassy who have been there for several years are struck by the fact that this evidence of casual violence that you referred to, bodies lying on the streets, that visitors see is, in fact, substantially less.

Senator PELL. I am glad to hear that, and trust the facts back it up.

In connection with the nuns, which is a particular concern in my State, I have rather some specific questions in this regard which I hope you will do your best to reply to, and if the question is too specific, your answer may be submitted for the record. The certification document

states that it has been determined that the accused former guardsmen acted on their own and not pursuant to higher orders. Am I correct in that?

Ambassador ENDERS. It says the overwhelming weight of evidence as of January is to that effect. That is intended to be a different statement.

Senator PELL. Could you give us the factual evidence behind that conclusion? What has led you to that conclusion?

Ambassador ENDERS. We did a review of all the evidence available to us prior to the certification, and we looked for both positive and negative indications in this regard. We frankly cannot find—and by we I am talking about the State Department legal adviser's office—we cannot find substantial indications or suggestive indications of higher-up involvement in these murders in the record. And in the case. We had a thorough review of it, again.

As you know, there is one piece of evidence that suggests positively that Colindres Aleman, the man who led the killers, we believe, was not involved, and that is his own polygraph. But it is always difficult to prove a negative, and we cannot say for certain. And that is why this statement is overwhelming weight of evidence. We just do not have—in spite of our efforts, we do not have any—

Senator PELL. Going to that polygraph test, who was questioned in it? The four men involved? Who were the actual people who were questioned?

Ambassador ENDERS. Each of the national guardsmen was subject to polygraph test. The polygraphs were carried out by Spanish-speaking FBI personnel on behalf of the Armed Forces of El Salvador, acting not on their own but for the Armed Forces of El Salvador. And the questions asked of each of them covered the whole range of affairs.

You know, we have to be careful about polygraphs. This showed what the operator considered to be substantial evasion on the point of the murders themselves, but showed Colindres Aleman not showing substantial evasion when asked about, did he receive orders.

Senator PELL. Who in the State Department has seen the polygraph test, and has Ambassador Hinton seen it?

Ambassador ENDERS. In the State Department, my own bureau, myself, the Legal Adviser's Office have seen the polygraph materials, or rather, the reports of the polygraphs including the questions. We have not seen the actual graphs, not being able to interpret them. The questions in the interviews we have seen. I do not know whether and do not believe that Ambassador Hinton has seen that material.

Senator PELL. And the actual polygraph now is in your hand, in the custody of the State Department?

Ambassador ENDERS. The actual graph itself is in the hands of the FBI.

Senator PELL. Thank you. I have a series of further specific questions along this line, which I would ask the chairman to pass on in my behalf to Ambassador Enders and would ask you to give us a written response.

Ambassador ENDERS. I would be glad to.

Senator PELL. And a couple that are not in the same subject area, I hope that they can be asked for written response as well.

[The following material was referred to on page 101.]

EDUCATION AND HUMAN RIGHTS IN EL SALVADOR¹

INTRODUCTION

Between January 5th and 11th, 1983, a team of educators, faculty and administrators drawn from different universities in the United States, visited El Salvador. The purpose of the mission was primarily to determine to what degree human rights are being observed in the field of education. But we also took it as part of our mission to survey the general condition of education in El Salvador and to garner whatever further information we could concerning the violation of human rights in the country as a whole.

The study team was sponsored by FACHRES-CA (Faculty Committee on Human Rights in El Salvador and Central America) and funded by contributions from private individuals in different universities across the United States. The team consisted of: Martin Diskin, MIT; Patricia Weiss Fagen, California State University, San Jose; Arnon Hadar, Dominican College, San Rafael, CA; Karen Parker, University of San Francisco; Paul Reinert, S.J., Chancellor, St. Louis University; Lars Scroultz, University of North Carolina; James Torrens, S.J., Santa Clara University; and Chester Wickwire, Chaplain, The Johns Hopkins University.

During our 6 days in El Salvador, we met with President Magaña, Defense Minister Garcia, the Ministers of Justice and Education, the Chiefs of the Treasury and National Police (the latter is also a member of the country's official Human Rights Commission), ex-President Duarte, then Acting Archbishop Rivera y Damas, representatives of the Constituent Assembly, industrial leaders, administrators and faculty members of the National University and the Jesuit Central American University, the directors of two private universities, and representatives of the teacher's union (ANDES). We were also granted an unprecedented meeting with political prisoners (some of whom were students, teachers and university faculty) in San Salvador's two main prisons. We visited the refugee camps at San Roque and San Jose las Montañas. And, finally, several of us stopped in Mexico City to talk with exiled leaders of the Democratic Revolutionary Front (FDR). A full itinerary and list of those interviewed may be found in the Appendix.

The United States Embassy in San Salvador was receptive and cooperative. Ambassador Hinton arranged briefings for us, facilitated our meetings with Salvadoran officials, and accompanied us on our principal interviews. His deputy, Mr. Mike Senko, and other members of the Ambassador's staff, also went out of their way to ease our path. Without this help, which we gratefully acknowledge, we could not have done all that we did in so short a time. We also, of course, arranged some of our meetings through other channels.

The bare facts of our visit conceal a host of intense emotions, felt by each of us at different moments and in different ways. The beauty of San Salvador does not jibe with the tales we heard of torture, violence, and indiscriminate repression. The lushness of the physical landscape contrasts savagely with the pitiful human devastation of the slums, the refugee camps and the prisons. The seeming calm of everyday street scenes hides a permanent violence, masks the plain fact that the country is at war with itself. The kindness of our own Embassy officials contrasts with the knowledge that the United States has taken a side, feeding the military apparatus at the same time that it tries unsuccessfully to moderate its ingrained fury.

Our conversations, like a needle veering wildly from one extreme to another, captured some of the contrasts in repeated phrases: "la coyuntura que vive el país" (the situation the country is living through); "incorporarse en la lucha" (incorporate oneself in the struggle); "subversión" (often in tandem with "comunista" or "terrorista"); "la tortura"; "compromiso" (commitment and self-dedication); "desaparecidos" (those who have been made to disappear); "diálogo" (possible discussions or negotiations between the warring parties); "la realidad" (what some of the people we spoke with want us to make known in the United States).

What is this "reality" that we have to make known? To understand that we have to get behind the meaning of these words, to interpret them as unambiguously as possible even though in El Salvador itself the meanings shift dramatically according to position on the political spectrum. Consider, for example,

¹ Faculty for Human Rights in El Salvador and Central America (FACHRES-CA), University of California, Berkeley, Calif.

words like "subversive" and "communist." To the traditional ruling elite, anyone who challenges the status quo of grinding poverty and searing social inequality is dubbed "subversive," better still "communist" because that word catches Washington's ear and opens the conduits of military assistance. Since this elite has traditionally preserved its power through the exercise of military or paramilitary violence, the violent control of subversion casts its net wide over the whole of El Salvadoran society. There is, moreover, a chilling impartiality to the killings. An Archbishop who speaks on behalf of the poor is as vulnerable as a teacher who sees education as a means to escape social injustice or a peasant who seeks redress from a local landowner under a new agrarian reform law.

It is hard to convey to Americans exactly how the lines are drawn. But El Salvador is a land where even to sympathize out loud with the lot of the poor is to be regarded with suspicion. To attempt to do something about it is to flirt daily with death, torture or arbitrary imprisonment. "Ninety percent of the foreign press here is pro-communist," said Colonel Francisco Moran, head of the much-feared Hacienda (Treasury) Police, "and education and the church have been infiltrated by international communism these last 25 years." This "reality" of Colonel Moran's was translated into another "reality"—that of a professor at the Catholic University. "You have to understand," he told us, "that even to know and speak reality here is to be subversive."

It is in such a context that we tried to ascertain the rights and wrongs, the uses and abuses, of education in El Salvador. The conclusions we draw are not encouraging. Many of those close to power regard education as in itself subversive. Teachers and university faculty form one of the groups singled out for violent repression in a country where such an honor is tantamount to a death warrant. The education system is in total disarray, and the government appears to have no coherent plan for its rehabilitation. The political space for dialogue that could be opened up within the educational system, and the National University in particular, remains firmly closed. It is to the creation of such a possibility for dialogue within a severely polarized society that we dedicate this report.

SUMMARY

The FACHRES-CA (Faculty Committee on Human Rights in El Salvador and Central America) investigated abuses of human rights in the field of education in El Salvador in January 1983. The team met with a wide range of key government officials, from President Magaña and Defense Minister García on down. They had intensive discussions with university officials, faculty, members of the teachers' union (ANDES), human rights organizations, religious leaders, and representatives of the security forces. They also had an unprecedented opportunity to speak in private with political prisoners, and to witness the sadness of the refugee camps.

The team found an educational system in almost total disarray, a National University forcibly occupied by the military, and a third of the schools closed. They found evidence of assassination, arbitrary arrests, torture, and intimidation of professors, teachers and students. Those in power at best give no priority to education and at worst regard it as inherently subversive, a threat to the established order.

The National University, with its tradition of autonomy and low-cost education, has been the pivot of El Salvador's educational system and a vital cultural and political institution since its founding in 1841. The facilities were occupied and looted by the military in June 1980, and to this day remain closed and increasingly derelict. The military claimed it was a fortress, a city within a city. But the speed of its occupation (2 hours) and the lack of any strong resistance suggests that it was only an island of free speech and political criticism in a sea of political repression at the time of its occupation.

The University continues to operate under the most appalling conditions. It tries to meet the needs of 10,000 students (recently boosted back up to approximately 20,000—two-thirds its pre-occupation enrollment) in rented quarters with no access to books, equipment, or other facilities. Its top administrators are deprived of salaries and some languish in jail after the arbitrary arrest of its Executive Council in 1981. Its budget has been reduced to one quarter of its 1981 level.

Everyone with whom we spoke was in favor of re-opening the university, but there is strong pressure within the government and the Constituent Assembly to deny its traditional legal status of autonomy which kept it free from outside

political (governmental) interference. Autonomy is a vital condition to achieve even a modicum of academic freedom in El Salvador. Without it, the university will be subject to government whims and dictates.

The Universidad Centroamericana (the Catholic University), with 6,000 students, run by the Jesuits since 1963, is the one private university in the country with a strong curriculum and solid reputation for teaching and research. Its faculty and students are often suspect as subversives and one-third of the professors have left because of intimidation.

Numerous small, private universities have recently opened. Tuition is high and far beyond the reach of the poor. While these institutions meet some needs and enjoy the support of private sector groups and public officials, they cannot fill the gap left by the closure of the National University.

Primary and secondary education have ceased in many parts of the country as a result of the repression and violence visited upon the schools and their teachers by the military and right-wing death squads. A third of the schools have been closed and a third of the teachers have been killed, "disappeared," jailed, or have fled the country. In addition, 4,500 teachers have had to be re-assigned because of threats against their lives. While the violence has diminished somewhat over the past few months, we had the impression that this was more because there were not enough targets left than a result of restraint on the part of the security forces. Fear was everywhere.

The teachers' union, ANDES, organized in 1964 and legalized in 1967, works for livable salaries, medical benefits and better work conditions. It also affiliated itself with the opposition movement in 1975 that ultimately formed the FDR (Democratic Revolutionary Front). By 1980, ANDES had 20,000 members out of 27,000 teachers. Severe repression has since cut its public membership to 1,000, but ANDES claims that thousands of the 19,000 teachers still working continue to pay dues clandestinely whenever they can. The leadership of ANDES was rounded up and jailed in August 1982, while conferring on proposals it had been asked to submit to the Constituent Assembly. Some of the leaders are still in jail.

Most of the prisoners we met were held under Decree 507, which sets forth procedures for arrest, detention, and investigation by the various arms of the security forces. The Decree, promulgated in late 1980, allows suspects to be held for up to 180 days, subjects detainees to military rather than civilian tribunals, and permits prisoners to be held incommunicado without any legal right of defense, knowledge of the charges, or access to information. The Decree creates a legal environment in which torture can flourish or prisoners be "disappeared" at the whim of the security forces conducting the investigation. It is seriously at odds with international conventions on human rights and is incompatible with the international obligations of the Government of El Salvador.

The two prisons we visited were the "show-case" prisons of El Salvador, Mariona (for men) and Ilopango (for women). We talked freely with the prisoners who provided us with abundant visual evidence of the tortures they had undergone, together with a survey of the inmates and a list of names of those jailed. They also gave us a letter for President Reagan. We have since been informed of a hunger strike in progress at the women's prison.

While in the prison, we met with Walter Zuleta, an ANDES member arrested in August 1982, who provided us with a sworn affidavit as to his arrest, torture, and forced confession accusing UCA of being an instrument of Marxist subversion. We were particularly disturbed to hear his claim that an American advisor was present during part of his torture. After 144 days in prison, Zuleta has not been before a judge and still does not know what his legal position is or what the charges are against him. This was typical for many of the prisoners we interviewed.

The refugee camps in El Salvador, such as those at San Roque and San Jose de la Montaña, are a sad and disturbing reminder of the agony El Salvador is suffering. There are some 150,000 to 300,000 displaced people in El Salvador and their plight is awful. Fear is widespread, as is malnutrition. People suffer from a lack of adequate health care, education, and the absence of even the rudiments of a social welfare system. These are truly the "neglected ones" in the tragic conflict in El Salvador.

PRIMARY AND SECONDARY SCHOOLS

The situation in the primary and secondary schools appears nothing short of chaotic, especially in the countryside. Between 1979 and May 1981 (the last date

for which clear data are available), 877 schools, or more than one-third of the public schools in the country, have been closed, leaving 107,000 students without access to schooling.

Nothing we heard suggests that the situation has improved since May 1981. Officials at the U.S. Embassy estimate that about a third of the schools continue to be closed because of the war, economic collapse, and suspicion on the part of the military of teacher support for insurgents. Officials of the teachers' union, ANDES, estimate that 1,200 schools are now closed and that some 19,000 teachers still hold down jobs out of a 1979 workforce of 27,000. But many teachers have fled rural areas for the comparative safety of the cities where, former president Duarte charged, some continue to draw salaries without a school to go to.

The situation in the north and east of the country appears particularly dire. Many schools in the region have been closed for more than 3 years now. Most of the 4,500 "reassignments" on account of death threats involved teachers in this region, many of whom were relocated to other areas entirely (including the cities). A whole generation of students in these predominantly rural areas is threatened with denial of even the most rudimentary education.

Even where schooling continues, it does so under the most dismal conditions. To the degree that teachers have played a prominent role in the progressive movement in El Salvador, and to the degree that elements in the military see teaching as inherently subversive, so the harassment of teachers and teaching has left deep scars on an already weak educational system. Cases of teachers shot down in front of their own students, of abrupt military closures of schools, conversions of schools into temporary military quarters, were all brought to our attention. The education of the young, so vital to El Salvador's future, takes place in an atmosphere of violence and insecurity where it takes place at all.

Symbolic of this situation is the occupation of many schools by the military and their conversion into barracks. The Defense Civil, a paramilitary group, occupies one former school in San Salvador. The Uruguay School in Colonia Zacamil in San Salvador is now a station for the National Police. And the U.S. trained Atlacatl Battalion is now operating out of the Ciudad Normal Alberto Mas Ferrer, a former training center for primary-level teachers.

Apart from the public schools, which have borne the brunt of repression and disruption, there is a small network of parochial schools that educate about 30,000 students in San Salvador and another 40,000 throughout the rest of the country. Some of the teachers in these schools have been arrested and imprisoned, but for the most part these schools, like UCA, have escaped the worst of the repression. They appear as islands of relative security in a sea of violence.

Finally, while those in positions of authority and power in El Salvador uniformly paid lip-service to the significance of education in the country's future, there was little evidence of conscious planning for the future or of tangible effort in the present for the restoration of the country's primary and secondary educational system. The Minister of Education, Carlos Duarte, told us of a plan to reopen schools under military protection and with active community participation on the part of teachers, parents and students. But the plan was vague—a mere idea about what to do if and when peace was restored. No one seemed unduly concerned that all the schools specializing in teacher training are closed, or that the National University, one of whose primary functions is to preserve the flow of new teachers into the system, was operating under such restricted conditions. The only tangible effort we could discover was an isolated case, made much of by General Garcia, in which two military officers, contrary to regulations, took it upon themselves to reopen a school and staff it for one year until the regular teachers felt it safe enough to return. We did not find General Garcia's comments very reassuring when put in the context of the massive disruption that has occurred in the educational sector.

It is, of course, exceptionally difficult to maintain a school system intact under conditions of civil war, economic chaos and social dislocation. And it is perhaps understandable, though regrettable, that the government has chosen to direct all of its energies into the pursuit of purely military objectives. This simply makes clear that there are serious long-term costs which attach to the war, and that the impact upon education is bound to be severe. But education has suffered far more than might reasonably be expected simply because so many in positions of power, particularly within the security forces, evidently perceive education as a threat and all teachers as subversive, no matter what they teach. We conclude that the right to an education, of even the most elementary sort, is one of the most seriously abused human rights in El Salvador today.

ANDES

The teachers' union, ANDES (Asociación Nacional de Educadores Salvadoreños), has been the target of severe and continuing repression. The power, though evidently not the spirit, of the union has been broken by a campaign of total terror set in motion early in 1980. Some 277 members have been killed (a recent bulletin of the union claims 300). Most of the deaths occurred in 1980 when 139 teachers lost their lives. Eighty-five were killed in 1981, and 17 in 1982. Seventy teachers remain in detention, another 40 have been "disappeared" and over 4,000 have fled the country. Out of a workforce of 27,000 in 1979, less than 19,000 still remain active in their jobs.

The diminution in the killings does not necessarily signal that the security forces and the para-military organizations of the right have in any way relaxed their campaign of terror. Most of the more active leaders of ANDES were killed or fled the country in 1980. Half of the current leadership is still in jail after a mass arrest in August 1982. The formal membership of the union, which once stood at 20,000, has been reduced to about 1,000 (although ANDES members say that thousands continue to pay dues clandestinely whenever they can safely do so). Death threats against teachers are very common. As noted, some 4,500 teachers had to be reassigned "for security reasons" during 1982, according to the Minister of Education. This was primarily, we were later told by the teachers we interviewed, because of the personal danger to themselves and their families. We can only conclude that the repression has reduced the union to such a state that murder is no longer deemed necessary as the primary means of control. Simple fear of murder, arbitrary detention and torture, has taken its place.

THE NATIONAL UNIVERSITY

The prestigious National University was seized and ransacked by the military on June 26, 1980. The campus remains closed and occupied by soldiers. Observers report that the facilities have been thoroughly looted, buildings strewn with files and stripped of equipment ranging from scientific instruments, typewriters and books to ordinary plumbing fixtures.

Founded in 1841, the university was responsible for nearly all higher education in the country. It served 30,000 students who paid 135 colones (roughly \$36) per year. This minimal tuition permitted the attendance of a relatively high proportion of poor students, although many still required financial assistance. The university has been operating at roughly one-third capacity, offering classes in rented facilities scattered throughout the city to only those students who were registered at the time of the occupation.²

The closure of the campus was accompanied by a campaign of repression and violence. During the action, the military indiscriminately shot and arrested students and faculty. Subsequently, the Rector, Dr. Felix Ulloa, was shot, and a further eighty faculty, students and staff were killed, forty-two jailed, and many more exiled. In 1981, the Executive Council of the University (elected by faculty and students) was arrested. Four members of the council remain in prison.

In Mariona prison we were able to talk with Professors Carlos Molina, head of the School of Economics, and Mauricio Domenech. We learned of two other professors still in custody (Salvador Martinez Flores and Francisco Mejia Bolaines) and of another who had been released on psychiatric grounds following exceptionally harsh treatment (Roberto Antillon Nufiez). In discussions with the Hacienda Police, we attempted unsuccessfully to pursue the case of Antonio Peña Melara, Chair of the Business Administration Department, who was arrested on June 30, 1982. In the women's prison, Ilopango, we learned of a secretary at the Registrar's Office who had been raped in her own home and subsequently tortured to obtain information about suspect faculty members. She was

Background

The university, as in many countries, had long been an important center of political debate in El Salvador. In 1972, it was closed by the army on the grounds

² According to recently received information, the university has just opened its rolls to new students, bringing the present student population to about 22,000. While this may be considered progress in terms of the numbers of students served, the fact that it takes place with no concomitant improvement of facilities, materials or budget suggests that the quality of education will continue to be severely impaired.

that it was a center for subversion. It functioned for some years after that with government-appointed administrators. After the October 1979 coup, political activity intensified as the government proclaimed its reformist intentions. But reform gave way to deepening repression as most moderate and progressive politicians left the government and the military strengthened its hold. As some people observed to us, the university, with its tradition of autonomy, became one of the country's few safe havens—virtually the only place in El Salvador that still permitted free debate about social and political issues.

In January 1980, a large contingent of students marched into the city to demonstrate and were forced back, narrowly avoiding major retaliation by the armed forces. Following this confrontation, the level of harassment directed against students (including killings) was reported to us to have increased substantially. A general strike which virtually paralyzed the country during June 23–25, 1980, apparently triggered the final attack against the university.

Former president Jose Napoleon Duarte insisted to us that the university had become a "military fortress" and a "sanctuary" for guerrillas. He also claims that the takeover of the university, which occurred while he was abroad, was not planned or desired by him. According to Duarte, political problems on campus arose not so much from the students who were, he feels, primarily influenced by the "more moderate communists," as from actual guerrillas who had infiltrated the campus and assumed armed control. This image of the university as an armed camp was echoed by Defense Minister Garcia and Education Minister Carlos Duarte who both argued that the army was forced to intervene.

National University faculty members presented a different view to us. They noted that while the university police were armed, faculty were not, although it was possible that some students had come to campus with arms or bodyguards out of fear. In any case, as they pointed out, the campus was occupied in less than two hours by the military. It is widely felt that had the university been an armed camp, as claimed by government officials, it would certainly have offered greater resistance.

Most accounts we received confirmed that the military was primarily responsible for looting the camps. Officers had furniture, office equipment and scientific instruments hauled away in military trucks. They later sold much of it openly in the streets. Afterwards, lower ranking soldiers are reported to have stripped off window panes, door panes and plumbing fixtures. Several buildings stand deep in water, and their foundations are feared to be eroding. We asked General Garcia, who conceded that the military was responsible for most of the destruction, whether the offending officers had been disciplined. His reply: "Ahorita, no hay problema" (there's no problem any more). The estimated cost of restoration ranges between \$20–30 million.

Present conditions

As suggested, the physical condition of the central Ciudad Universitaria (an enclosed area of about two dozen city blocks) is grim and will require extensive and costly rehabilitation. The lack of buildings, books, equipment and teachers is seriously exacerbated by present budgetary restrictions. The National University's budget for 1983 is 15 million colones, down from 65 million in 1981.

While classes continue to be offered to a severely reduced student population in makeshift facilities, the quality of education has unquestionably suffered drastically. We visited the Law School which now operates out of cramped rented quarters. Currently there are 1,000 students which is far more than capacity. For these students, the law library, which once held 50,000 volumes, now offers perhaps three to four hundred. No books can be checked out—they must all be used on the premises. It is obvious that the 58 remaining professors and 30 mostly half time instructors are unable to assign much essential work because the materials are simply lacking.

Currently, eight schools (medicine, law, engineering, agriculture, economics, arts and sciences, chemistry and dentistry), including about 100 departments, offer classes. The present government budget is enough to finance these operations for only half the current year. As a result, many professors are leaving the university and, in many cases, the country. While in 1970, most faculty were full time, only about 40 percent are so at present. Moreover, at least one educator that we spoke with believes the university budget will continue to be reduced and possibly eliminated.

Remarkably, the university administration continues to function despite continued severe harassment and exceptionally adverse conditions. As noted, 21

members of the top advisory council were arrested and only 17 have been released. The present rector, Dr. Miguel Angel Parada, and his secretary were arrested by the Hacienda Police in February 1981, and held for 30 days. Since then, all administrators have been serving without salary as a result of Decree 603 which declared the administration illegally constituted. Faculty and staff contributions now support administrative operations.

One of the most pressing current problems is securing the funds needed to continue operations even at these reduced levels. The administration has prepared a proposal for an international bank loan, but this failed to receive the necessary government support. A plan is now being developed to solicit contributions from corporations, graduates and others sympathetic to the goal of maintaining a functioning university.

The university remains, at this point, devastated, a fact that has serious implications for the development of the country far into the future. As Dr. Armando Oliva, former member of the Executive Council, and now outside the country, pointed out, professionals are no longer being developed to feed into key positions in the country or to staff primary and secondary schools. The university was of central importance in El Salvador, and so long as it is closed, the level of education will remain at a drastically reduced level. In a country so poor in natural resources, it is particularly tragic that basic human resources are not being developed through education.

Future prospects

Nearly all parties with whom we spoke, including government officials and security forces personnel, agreed that the university should be reopened. President Magaña stated to us that it was important to reopen the university because the poor cannot afford to attend private institutions. Education Minister Carlos Duarte indicated that opening the campus was a vital necessity to "the development of the democratic process." A group of seven legislators from the Constituent Assembly told us on January 7th that the Assembly had that day voted in favor of reopening the campus by the end of March of this year. Defense Minister Garcia indicated the army would favor reopening the campus, provided that students are there only to study.

On the surface, then, the issue of whether the university should be allowed to open is not controversial. The problem lies in the crucial question of autonomy. This has been the subject of a series of talks over the past year involving the Hacienda Police, the Assembly, and the President. According to the Rector, the university was asked to provide guarantees that there will be no further political activity. University officials responded that they cannot give any such assurances and argued that the university must continue to be an institution that guarantees free expression and is open to discussion of all problems. Furthermore, it must be operated in a democratic manner and be open to all members of society. They feel strongly that while the university should be responsible to the state in terms of the proper use of allocated funds, it must have independent administrative and budgetary authority.

Faculty with whom we spoke indicated that the government has specified at least three conditions for the reopening of the university: public streets must run through the campus, the military must be free to enter at any time, and political activity must be submerged.

In our judgment, the likelihood of this issue being resolved is small. The Constituent Assembly members stated to us that they were willing to concede ideological but not territorial independence, yet it is difficult to see how freedom of expression can be assured in the face of the constant threat of police intervention. In any case, they stated that a legislative decree to reopen the campus must await an inventory of all university property. The Rector reported that a plan to reopen the campus was presented to the Assembly in October 1981, but it was rejected. It was presented again with a request for a first phase appropriation of \$13 million to renovate the campus sufficiently to reopen it in stages. But over 2 years have passed since the takeover without action of any sort, and it is the Rector's opinion that the campus will not reopen so long as the military is against it.

Our impression was that civilian government officials were uncertain about what to do with the university and unwilling to take a strong stand against the military in favor of reopening the campus with any assurances of independence. President Magaña conceded directly that education is not a priority political goal. The Education Minister, for his part, characterized the old university as a state within a state, and insisted that the traditional autonomy of the university could not be restored if it meant returning to this situation.

In our view, actual control over the future of the university lies with the military and the police. On this basis, there is little cause for optimism. General Garcia, the Defense Minister, continued to insist that the left had previously taken advantage of the university's autonomy to carry on subversive activity. He did go so far as to suggest that the university be autonomous as far as teaching is concerned while being financially accountable to the government. Yet, in response to a suggestion that the campus be reopened in stages, he noted that unfortunately the most subversive faculties (social sciences, law, etc.) would be the easiest to reopen. Similarly, Colonel Francisco Moran, head of the Hacienda Police, also told us he wanted the university opened as soon as possible, but never as a subversive instrument.

The essential question is whether the issues of university autonomy and freedom of expression can be reconciled with the demands made by civilian and military officials for political conformity and an end to activism. In our view, and in the opinion of the university officials and faculty we interviewed, they cannot. For this reason, we remain extremely pessimistic about the prospects for reopening the university under anything approaching the normal conditions of autonomy and academic freedom that are generally recognized as the prerequisites for adequate and constructive university operations.

RECOMMENDATIONS

We returned to the United States feeling strongly, as did most other Human Rights visitation groups, that increasing levels of military aid is not the answer to the agony of El Salvador. Rather, we believe that creative dialogue, cease fire, and political negotiations involving all parties are essential to bring about a peaceful resolution of the civil war.

Our recommendations are presented in the hope that these steps will be taken toward a peaceful settlement in which respect for the fundamental human right to a decent education can be realized.

1. We recommend that the National University be re-opened in its old quarters under conditions of full and guaranteed autonomy.

The condition of autonomy is vital because it is only under this circumstance—a university free of direct government control—that the National University can fulfill its historic mission and become a center for free education of the people, the free interchange of ideas, and a potential locale for national reconciliation of divergent ideologies. The reopening of the National University requires immediate action. We urge:

a. That the Government of El Salvador and the Constituent Assembly take all legal measures required to return the National University to its traditional constitutional position and seek the funds necessary for reconstruction and proper payment of faculty and administrators. We also urge that the government take all necessary measures to guarantee the safety, independence, and academic freedom of all university personnel.

b. That the United States Government lend its influence to the re-opening of the National University under conditions of full autonomy.

c. That the United States Government allocate economic aid to support the reconstruction and re-equipment of the facility.³

2. We recommend that the rights of the faculty, teachers, and students be fully respected by the security forces of El Salvador, and that the right to legal representation and association, through organizations such as ANDES, be fully guaranteed.

We are particularly appalled at the loss of life, disruption, displacement, and intimidation visited upon teachers as part of the general campaign of terror launched after January 1980, and at the seemingly ruthless attempt to destroy the teachers' union, ANDES. We urge:

a. That the Government of El Salvador and the Constituent Assembly recognize that the rights of legally constituted teachers' organizations are sacrosanct and take all measures to guarantee them.

b. That the U.S. Government take into account the level of respect for such rights in El Salvador in future decisions regarding further assistance.⁴

³ We also urge that the private resources of faculty and university administrators throughout the United States be mobilized to donate money, equipment, books, and other items lost, and to facilitate the exchange of university personnel between the two countries.

⁴ We also encourage university and teachers' organizations in the United States to take active steps to appraise themselves of the continuing situation in El Salvador and take whatever steps they can to lend moral and tangible support to teachers' organizations in that country.

3. We recommend that a full plan for renewing and expanding primary and secondary education be developed and implemented as soon as possible, with special emphasis upon the reduction of illiteracy.

Illiteracy and lack of education is no foundation for a genuine democracy or for economic development. We urge that the Government of El Salvador, with international backing, set in train a process whereby ignorance and poverty may be jointly combatted through education of the mass of the people.

4. We recommend the immediate suspension of Decrees 507 and 943, and that political prisoners be granted full judicial rights; we also urge the U.S. Government to take into account efforts to bring integrity to the judicial system of El Salvador in decisions regarding assistance.

5. We recommend that the U.S. State Department, in preparing documentary evidence on the condition of human rights in El Salvador, pay careful attention to conditions prevailing within education, at both the university and the primary and secondary levels. We urge that El Salvador's performance be judged against existing U.N. and OAS charters and other agreements including the Geneva conventions guaranteeing the right to education and the right to educators.

6. We recommend that substantial amounts of aid be channeled through responsible humanitarian agencies for medical supplies, food, shelter, and education to aid displaced persons in El Salvador.

The CHAIRMAN. Senator Helms.

Senator HELMS. Thank you, Mr. Chairman. I found it quite interesting to hear the comments about the certification process. I have no objection to it. I agree that I do not think the right questions are asked. As a matter of fact, I have had to offer an amendment on the Senate floor in this regard, to specify that the administration would be required to assess the atrocities by the Marxist guerrillas, and that was blocked on a technical basis, which was fine.

But in talking to Senator Dodd a moment ago informally, my problem with the certification process is not that this Congress ought not to have the information. I agree with that. As a matter of fact, I think that we ought to have that certification process beginning in 1946 when we started the foreign aid program, which when you factor in the interest considering that the money that was disbursed through the foreign aid program was borrowed money, inasmuch as we were running a deficit in all but 1 or 2 of those years, the cost to the taxpayers comes to substantially more than \$2 trillion.

I mention that in an ancillary way simply to say that I think that the Congress has a right and a duty under its oversight responsibilities to request certification. But what this certification process amounts to is a Pandora's Box whereby all the people rise in a chorus against our non-Communist friends around the world. You can watch it.

El Salvador happens to be the one right now. You watch it and you will see demonstrations. Anytime there is any information available about an anti-Communist friend of the United States, we have to look at every wart and pimple. We have to fuss about it and we have to carry placards around, but not a mumbling word is said about the atrocities, the horrible murders committed in multiplicity in El Salvador by the Marxist guerrillas. Oh, there may be a sentence here in the news media or a sentence there, but it is always that anti-Communist ally of the United States that takes the heat.

Now, let me ask you, Mr. Abrams, or Ambassador Enders, or Mr. Sanchez, what do the people of El Salvador think about a political settlement, a requirement that a deal be made with these Marxist guerrillas?

Mr. ABRAMS. It seems to me the best evidence we have, Senator, is the election.

Senator HELMS. Exactly.

Mr. ABRAMS. And we know that there was an unexpectedly large turnout, which seems to me is the best evidence that that is the kind of solution that the people of El Salvador would like.

That is to say they would like to choose their leaders rather than having that choice made over their heads by somebody else.

Senator HELMS. Well, this constituent assembly is the only truly democratic body down there, isn't it?

Mr. ABRAMS. Yes.

Senator HELMS. And I think the distinguished Senator from Kansas, Mrs. Kassebaum, went down as an observer of those elections, and my impression is that you thought it was a pretty good exercise in democracy.

What we have—and I do not want to stray too far afield—is a repeat of what went on in Chile. Now, let me say that probably there is no country south of this border that is our dish of tea 100 percent. They do not do things like we do, they do not think as we do. But we do not have the luxury of saying well, you have to be 100 percent, because we are not 100 percent ourselves.

When I came to the Senate I heard all of the oratory about how terrible it was that Allende had been overthrown in Chile, and what a great guy he was. I thought he was a bum. And so did the people of Chile, which is precisely why he was overthrown.

He had ruined that country and its institutions, and it was not the military—they did not want to get involved in overthrowing Allende. It was the housewives and the mothers of Chile who got out in the streets every afternoon at 4 o'clock and beat on their pans demanding that this man be overthrown. And yet I hear in the U.S. Senate even today that it was bad for Allende to have been overthrown.

Let me ask you this. Would you welcome a requirement under certification that a complete assessment insofar as it can be obtained be included as to the murders, the destruction of property, the mayhem caused by the Marxist guerrillas in El Salvador? Would you want that?

Mr. ABRAMS. Personally, I would. I think it would give us the opportunity to set forth the facts, which I think are too little discussed usually in the debate over El Salvador.

Senator HELMS. And at least it would be there available for the Washington Post and the New York Times to ignore. And we could say, you had the information and you did not use it. I think it would be highly beneficial to give both sides of it.

And I will say one thing more, Mr. Chairman. Let the people carry their placards, do their marching and protesting if they wish, against our trying to stave off a takeover by Marxism in Central America. But if you think we have economic problems today in this country, you wait until we stand back idly and do nothing in Central America and let it be taken over, as Cambodia and Vietnam were. You remember the boat people. You wait until those 10 million feet people start flitting across our borders with no homes, no jobs, no money, no capability to speak the English language and you see what happens to our social programs and our deficits.

I know that I have not asked any questions, Mr. Chairman, but this matter has been on my mind and in my heart for a long time, and I think those who are protesting and accusing the administration had better back off and look at what they are doing to their own country unless they, in fact, do favor a Marxist takeover of Central America. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Helms, I think I have reached enough of a conclusion now that I can, with an open mind—I have reached the conclusion after hearing our distinguished witnesses—that we ought to continue the certification process but we ought to modify it. I would not wait until the floor; I would suggest that you offer such an amendment in committee.

Senator HELMS. I intend to.

The CHAIRMAN. You might find that I not only would sponsor it, but we could get bipartisan support for it. I am very pleased, indeed, that Secretary Abrams has indicated that they would welcome this opportunity to report on that aspect of it and let the world see it. We know it is going on. We might just as well put an official sanction behind the investigation. Your certification will be credible all over the world.

That is why I think the job you hold is a very important job, and why it was one of the longest processes we have. Because you have credibility all over the world in this field.

Mr. ABRAMS. Thank you.

The CHAIRMAN. I think it would be a very important addition to the certification process, as Senator Helms has suggested.

Senator BIDEN.

Senator BIDEN. Thank you, Mr. Chairman. I apologize to the witnesses for being in and out. I am a member of the Budget Committee and Stockman is upstairs talking to us. I can tell the Senator from North Carolina that there will not be any social programs left anyway to worry about. [Laughter.]

So that is not a problem. I want the record to show before we start, Mr. Chairman, that I, unlike Senator Helms and others, have no pink cord attached to the microphone. The way in which we characterize people around here as being good Americans, bad Americans, for Marxism, against Marxism, I am just very worried that the television crew will pick up the fact that there is something pink about my seat.

The CHAIRMAN. You notice Senator Helms does have one.

Senator BIDEN. Yes; that is the point I want to make. I do, believe it or not, have some questions. I would like to direct them to Secretary Sanchez, if I may.

I am a little confused, Mr. Secretary, and although I heard only part of your testimony, I have read your testimony and I am confused about a few things that may be not actually contradictions but my lack of understanding of the connection.

I think there is an apparent contradiction. For example, in your testimony you say, "There is a need for a campaign to plan for prosecuting the war." And then you say, that the leaders of the armed forces have been distracted from fighting guerrillas by the need for guaranteeing the political, economic, and social reforms.

You go on to say that Salvadoran field commanders recognize this diversion and have criticized their superiors accordingly. And then

you say, but the commanders directly responsible for prosecuting the war increasingly "speak and act in a manner which indicates that they understand that getting the support of the civilian population is essential to win the war."

Now, on the one hand your argument is made that the military folks are saying look, let us do our business, let us do our job. Our job is fighting. Let us go out and win a war. But increasingly, you point out the same people are saying we cannot win the war unless we bring the people around. And you cannot bring the people around unless there is reform.

At least, that is how I read the statement, and that is what I am asking for clarification on. You cannot bring the people around unless the reforms are moved forward, and so I wonder whether or not that is what you are saying, and depending on what the answer to that is, I have other questions. Is there a contradiction?

Mr. SANCHEZ. I did not mean for there to be a contradiction in the statement, Senator.

Senator BIDEN. There may not be. I would like you to explain.

Mr. SANCHEZ. The point being that the military support reforms. What I was trying to point out is that they have been critical of the high command for not executing the war more vigorously, and you will also note in my testimony that that is probably true. They have not, in other words, executed the war as vigorously certainly as we would like them to see it done.

Senator BIDEN. I will stop you there. Isn't the reason that you and the general say that they are not pursuing it more vigorously is because of their need to direct their attention toward the reforms and political structure? Is that right?

Mr. SANCHEZ. That is right, but one is not exclusive of the other. In other words, it does not mean that because they have to direct their attention to reform, that they do not support reforms. They do support reforms. They are the ones who, in their communique of October 15, 1979, suggested the reforms in the first place. And they continue to support the reforms.

The political struggle that has been taking place in San Salvador, the capital of the south, is what some of the High Command claim has detracted from their more vigorous pursuit of the prosecution of the war. This has been picked up also by some of the commanders and most of the commanders who want to get on with it. That is not to say again that the high command does not.

Senator BIDEN. Let me ask it another way. Is it possible to walk and chew gum at the same time? I mean can they pursue with the degree of fervor necessary, the political and economic reforms at the same time pursuing the military campaign to the degree that we think is necessary in order for the Marxists to lose and democracy prevail? That is the question. Are they capable of doing both simultaneously? And is there a need to do both simultaneously?

Mr. SANCHEZ. Yes, there is. I think it is very important to continue to have the military support of the reforms. Absolutely. I think they can do both. What they need—and this is one of the problems that we have had—is probably more support from us in order to be able to give them additional training over the 10 percent that General Nutting has mentioned.

Senator BIDEN. More military support?

Mr. SANCHEZ. More military support in training than what we have been doing. We have helped them thus far to increase their force structure. Now what they need is training in order to implement what they have learned, what they have done, and proceed along those lines, because I think that it is a matter of how do they get on with it. That is why I mentioned that they have to have and should have a campaign plan so that they can lay out certain milestones for themselves in moving forward on both fronts.

Senator BIDEN. I would like to direct this to both you and the general, if I may. And, General, I cannot help but say when I first came to the Senate I looked around, and my idea of, you know, a 29-year-old kid coming into the Senate, there was a guy named Fritz Hollings, I thought that is what Senators look like. You are what generals should look like. [Laughter.]

You have a commanding presence, so I am likely to listen to whatever you say.

General NUTTING. I wish I were 29.

Senator BIDEN. I wish I were 29. And I would like both the Secretary and the General to respond to this. I am still in a little bit of a bind here. Would additional U.S. aid or military training in the context that the Secretary just spoke of, how would that additional aid prevent the high command from the degree of distraction that they are presently encumbered with as a consequence of having to pay attention to political and economic reform?

And I would like that from the standpoint of you, Mr. Secretary, and then the military man. How does that work?

Mr. SANCHEZ. First, I think we are getting confused here. We are either talking past each other or not understanding what I said or misinterpreting what I said in my testimony. I am saying that the military people are unhappy with the way they have conducted the war thus far. They should conduct it more vigorously.

What I am saying is that some of the distraction has been the fact that they have been paying attention to the reforms, which is important. I am not saying that they should stop that. And therefore, when we get to the training part of it, the three battalions that have been trained by the United States are the ones who have given the best performance in the field, not only on the fighting side but also on preserving human rights and in not having the charges levied against them that they have had in the past or like other units of the security forces that still continually have charges levied against them.

But they have been the ones who have performed well in the field. They are the ones who are conscious of the need for popular support in order to be able to win this war and that without it they cannot. They will not be able to hold out.

So what I am saying is that we should train certainly at least one more battalion, but more training to have more people in the armed forces feeling that way. And then in that way they also will be able to execute the war more vigorously.

We have people in the middle levels who have not been trained, who still have not changed their way of doing things. It is hard to get them out of the barracks, out of the quarters. They have not done that in the past, and until they see that as the way to operate against the guer-

rillas, I feel it is going to be very difficult to move on with it as a force in its entirety.

Senator BIDEN. I know my time is up. But could I ask the general to make a comment on that, and then I will stop, Madam Chairman.

General NUTTING. Yes, Senator Biden. I would essentially reinforce Secretary Sanchez' comments and observe that in the scene today in El Salvador there is almost a total admixture of political and military. It is not unusual in Latin America to find a highly politicized military institution, and certainly this one in El Salvador is. But they are changing, or they are trying to change. And I think our approach needs to recognize the importance to us of trying to separate the political problem from the military problem.

Now, that does not mean that they cannot chew gum and walk at the same time. They have committed themselves as an institution, and they were the ones that did it in the first place, to reform programs.

Senator BIDEN. Let me pursue that. It was the military who committed themselves to that in 1979, I believe it was.

General NUTTING. October 15, yes, sir.

Senator BIDEN. But are not many of the players who were part of that military decision, are not most of them gone?

General NUTTING. Many of them are gone. That is part of the problem. Trained military leadership is one of their deficiencies. And we have assisted at the lower levels of tactical leadership, but we really have not had much impact at the middle-grade levels which I think is where now some mechanical problems exist that are amenable to improvement. I think our approach does need to try to separate out the political from the military.

Senator BIDEN. Who will then do the political?

General NUTTING. The elected leadership is increasingly able to do that. I am saying that if we appeal to the soldierly qualities of that leadership which does exist and try to assist in improving its professional military qualifications, they can conduct, as Secretary Sanchez says, a more vigorous campaign and do a better job. There is that possibility.

Senator BIDEN. My time is up. Let me conclude it by making this statement, and maybe in the second round I can come back.

What I see is a slight difference here, and maybe only slight. If I were a three-star general with responsibility relating to El Salvador, I would want very badly—and this is not a criticism, it is a compliment—I would want very badly to train the military to do what the military is intended to do, and that is to pursue the war. And that is what I would want them doing.

My problem is that there has not been—and I believe there is not now—any sufficient civilian leadership to be able to take over the other part of the job which everyone acknowledges, including the military, is essential for "winning the war" in El Salvador.

And so I hear a general doing what I would do were I sitting where he was, saying separate out as best you can and let the political forces deal with what is necessary to be dealt with in order to aid the military, when in fact, in my view, there is no sufficient political force there to do it because the initiation came from the military in the first instance.

So what I want to pursue in the second round is the strength and vitality of the political framework, the political force structure, in

order to pursue what everyone acknowledges apparently is an essential component to winning the war so that we do not have an excuse to revive our social programs that Mr. Stockman has eliminated.

I yield to my colleague.

Senator KASSEBAUM [presiding]. Ambassador Enders, I was struck by your opening comment when you said that you were not very comfortable having to say OK or not OK. I think many of us have reached that point. I have no quarrel with Senator Helms' suggestion. It seems to me a fair proposal. But I quarrel with the certification process at this point.

I would agree with General Nutting's observation in his opening comment that the discipline has been helpful. But I feel we are at the point in our policy regarding El Salvador a little bit like the game of "Pin the Tail on the Donkey." We are blindfolded and sort of just hoping that we hit the right spot.

I feel very strongly that in the next 6 months, before the next certification period, we have to find a new framework for a new policy. I would believe that perhaps you share some of this frustration. I think it is important for us, all of us who share this concern, to explore some of those policy alternatives.

But part of the certification process, of course, the most important part and the reason for it, is how much or should we give military assistance to El Salvador? I think the discussion has been very interesting.

I found it interesting that in the opening comments no one really commented significantly on the offensive that is going on there. From my reading in the paper, it would seem to me to be a very strong offensive that the guerrillas have launched.

I would like your comment in light of the fact that 2 years ago, when the guerrillas launched what they called their Final Offensive, and a great emphasis was made that this was the major offensive—and it failed dramatically—they have seemed to gain in strength at this particular point in time despite the military assistance in the last 2 years that we have given the Government of El Salvador.

While both Mr. Sanchez and General Nutting have spoken to the fact that the military aid has not been really sufficient, nevertheless, to many it has been a substantial, and to some a central, part of our policy. I would just have to analyze at this point that, to me, there is a military stalemate; there seems to be a political stalemate, also. How do we get off the particular dime that we seem to be on in our policy?

I would appreciate someone's comments on the offensive at this point. If, indeed, it is simply a question of our becoming more militarily involved, which I think many would question, why have we seemed to have failed up to this point? Is there a change going on in the military in El Salvador at this point which is causing perhaps some impact on military operations?

Ambassador ENDERS. Let me make one or two comments, and then perhaps General Nutting or Mr. Sanchez will do so.

The first is how is the situation now different than it was, let us say, 1 year ago at the time of our first certification, or 2 years ago at the time of the final offensive? I think it is this: that the insurgency has remained about the same size in terms of numbers, about 5,000 or 6,000 front-line troops. Those troops have proven that they can

coordinate their actions better in this period than they did before, that they have been substantially better equipped in the course of this period.

For example, the troops engaged in the Morazan operation now on the part of the government found that they were encountering heavy mortar fire of a kind that they had not encountered before and which is clearly of foreign origin.

On the other hand, they have not been able to operate effectively nationwide. The insurgency has been regionalized. Whereas there was in fact a substantial amount of political and military conflict in and around cities earlier, that did not happen. It does not happen now.

You may have noted that in the course of the election, when you were down there, there was a major penetration in the city of Usulután by the guerrillas. That did not happen this time. So they are strong, and I think they have improved their performance. They have also been regionalized.

With regard to the current situation, the army I think failed to react sufficiently vigorously with the right tactics at the time of October and November, allowed the guerrillas to expand their level of activity somewhat.

They are now engaged in a major push in Morazan Province in the north in opening that up. In that process they have left themselves vulnerable to an attack on a city in the central Province of Usulután, Berlin. There is a city which was defended by 75 national policemen. A larger force appeared, after several days of fighting, overwhelmed it.

I think the question now will be can that city be held by the insurgents in the face of the arrival of actual soldiers to counterattack? And I think we should see the answer to that rather quickly.

I think it is a significant psychological action, the taking of Berlin. It is not significant militarily. More to the points about the certification is, of course, that it invites a combination of military action and other kinds of actions to attract attention. That clearly is going on.

General.

General NUTTING. Senator Kassebaum, I would agree that the central issue that our Nation has been facing is whether to provide aid and if aid, whether to provide military aid, and then to what extent do we provide military aid. I do believe, as I mentioned in my opening comments, that we have provided a margin of aid which has been important in achieving the current situation but which has not been decisive.

I agree with Ambassador Enders that actually the situation has been regionalized. Both sides in the last 2 years have become somewhat stronger. The aid that we have extended has largely been devoted to expanding force structure by an order of roughly 50 percent. Over the same period of time the best estimates available indicate not probably much change numerically in guerrilla strength but a substantial change in the quality of their capabilities and their performance.

There is a certain degree of mechanical problem within the armed forces of El Salvador which can be found in any armed force. It is the development of not only fighters but staff systems that will assist in performing the essential functions to enable them to cope effectively on the battlefield; the tactical intelligence system, the command and

control system, the logistics system, and so forth. Those essential systems have not yet been well developed, as Secretary Sanchez had mentioned.

Given the current situation, with an initiative now being taken by a large force of the army in conjunction with Air Force support in Morazan, a focus of the government forces capability, it remains to be seen what they will develop from that rather major effort.

Since the certification hearings last year, we have seen four to six major tactical operations involved in pursuit of the guerrillas. They have not been notably successful, and there continue to be efforts made to help them become more capable of conducting smaller unit operations so that they will have a greater effect against the guerrillas wherever they may be found in the battlefield. That is the quality of performance that has yet to be achieved.

Senator KASSEBAUM. It seems to me a great tragedy really in all of this that nothing seems to have changed. There are some slight changes, but Ambassador Enders, would you agree that our policy now needs to move beyond certification and we need to branch out and get off just that framework?

Ambassador ENDERS. Senator Kassebaum, I think a lot has changed. You did not have an elected assembly 2 years ago.

Senator KASSEBAUM. Well, I would like to go back to just 1 year ago.

Ambassador ENDERS. Well, a year ago you did not have an elected assembly. I would associate myself with the remarks made here earlier which have the basic strategy in El Salvador holding off the insurgents. They are supplied from the outside. They can go on a long way. There is simply no way other than with an overpowering amount of military assistance that they could be destroyed, holding them off while you get on with the business of transforming society politically and socially.

Now, the fact that the guerrillas have not gone away does not mean that you cannot go on with that process, provided you are not under constant threat. There must be enough military assistance which has got to be reliable enough to that you do not feel that there is going to be an uncontrolled military threat periodically that you are going to have to face.

But the real solution to this problem is political and social. And in that regard, Senator Kassebaum, I think all of the people who have been looking at El Salvador have been impressed by the absence of guerrilla strength of a political kind in the cities or the heavily populated areas. I do not say they do not have supporters. They do undoubtedly have some supporters. But there is not any real evidence of the strength of that kind of support. And it is not organized, and it cannot bring itself to bear politically.

Senator KASSEBAUM. So you would think certification as such continues to be a worthy endeavor?

Ambassador ENDERS. Well, I have indicated some concern about the fallout, the side effects of certification, I think we ought to try to deal with. But I do not think we ought to back off the basic requirements that we have set in certification if you can find some way to pursue those requirements without in fact defeating our friends militarily. And that is my main concern here. We have to solve that problem.

Senator KASSEBAUM. The red light has gone on, but I would like indulgence for just one more brief question if I might, Senator Zorinsky, because it seems to me—and I do not know if you can comment on it in this brief time, and it is not concerning certification, but it is very much a part of Central America.

And that is, the maneuvers that we joined in yesterday on the Honduran-Nicaraguan border. I wonder how you would interpret this in light of the principles that we signed in the final act of San Jose, which said one of the principles that we supported was defusing tensions among nations in Central America by reciprocal and verifiable agreements on arms imports, frontier patrol, and assistance to insurgent groups in each other's territory.

I would question whether an action such as took place yesterday is helping relieve those tensions, and would like your interpretation of how that is implementing those accords that we signed.

Ambassador ENDERS. The accord calls specifically for reciprocal and verifiable changes, Senator. We said in there, for example, that we were prepared to pull out all of our military trainers and personnel in Central America, but we wanted the Cubans out, too, and the East Germans, and we wanted the PLO out and the others at the same time.

We said that we would be prepared to assist in mutual agreements on heavy weapons but they had to be reciprocal on the same basis. We have been talking here about military assistance to El Salvador, and if you add up military assistance to El Salvador, and if you add up military assistance to El Salvador over the last 3 years, you still get less than Nicaragua received in this period.

We think Nicaragua received \$150 million worth of military assistance in this period and did not face any of the fighting that El Salvador did, so there is a major escalation going on.

Now, I would not exclude at all that you could find some reciprocal basis. We want to get Central America out of the East-West conflict. That is the purpose. But you have to have the other guys in, too.

Senator KASSEBAUM. I couldn't agree with you more. I wonder why, though, yesterday we went ahead with those maneuvers, which had been postponed once, and if it did at this particular point in time send any message that was really the exact opposite of what we would like to work toward in getting some kind of reciprocal effort.

I wondered if we were working as well to get some reciprocal endeavor instead of just pushing for our own maneuvers there.

Ambassador ENDERS. Senator, I don't think you can get a solution to this problem if our friends feel that they don't have a backup, but I would agree with you that merely backing them up is not the only answer, and we would like to see whether in fact Nicaragua and the other countries would indeed be prepared to implement the San Jose principles. We do think it is a blueprint for the solution to this problem.

Senator KASSEBAUM. Thank you. I have far exceeded my time.

The CHAIRMAN. Thank you.

Senator Zorinsky.

Senator ZORINSKY. Thank you, Mr. Chairman.

Speaking from the perspective of a former businessman, and from the perspective of citizens of this country who are finding it increasingly more difficult to balance their checkbooks and make ends meet,

U.S. policy in El Salvador has to be considered a very bad proposition. For all the money that we have spent in that smallest nation in Central America—hundreds of millions of the taxpayers dollars—we really have very little to show. Here is what we have received for our money: continued killings of innocent civilians, continued torture and barbarism, government troops not really held accountable for human rights abuses, and political reform measures that are hardly designed to encourage a more democratic system and an open dialog with the moderate opposition.

And what about the cases of those Americans who have lost their lives in the Salvador turmoil? It is so hard to believe that today there is still no resolution of the cases of the murdered churchwomen. In fact, whenever you turn around there seems to be another obstacle placed in the way by what serves as the system of justice in El Salvador. What is the U.S. Government doing about going to the real heart of the matter—pressuring the Government of El Salvador to investigate and prosecute the higher-ups involved in the deaths of these American citizens. In the case of the two land reform specialists, one of the prime suspects is still on active military duty in the field. This case is completely stalemated. Most people forget the case of John Sullivan. There has to be a more thorough investigation of his disappearance and assumed death. Now we have an eighth American killed in El Salvador. Young Michael Kline, not an itinerant wanderer as the State Department at first portrayed him, but a serious student, fluent in five languages, beaten and then killed at point blank range by soldiers after he was pulled off a bus this past October. The three soldiers involved are free today.

Now I ask, what are we going to have to show for the next hundreds of millions that we throw into the quagmire that is El Salvador? More of the same?

I know what the American people want to see right now. Peace. A political solution. A resolution of the conflict by all the contending sides in El Salvador. This process is going to need a lot of help. The Mexicans once again have taken an initiative, this time along with Panama, Colombia, and Venezuela. The United States must support these efforts with all vigor to bring peace to this region.

From the very beginning, I have called for the United States to support the initiatives of the region's nations to bring peace to El Salvador. We must move in this direction now.

Peace is the only road out of El Salvador.

Mr. Sanchez, you are the one, when I called last year, who said I couldn't see the Woerner report; are you not? You said that if I were Salvadoran I could see it, if I were a member of the Department of Defense I could see it, but as a U.S. Senator, until you receive permission from the Salvadoran Government, I could not see it under any circumstances even though several members of the State Department had seen it. Is that true?

The CHAIRMAN. Senator Zorinsky, I have a feeling you have been waiting for this day. [Laughter.]

Mr. SANCHEZ. He has, and here I am, Senator.

That is not exactly what I said. Very briefly, what I said on the phone when you called me that day is that this was a document belong-

ing to a foreign government and in order to make this document available——

Senator ZORINSKY. Who prepared the document?

Mr. SANCHEZ. The Salvadorans.

Senator ZORINSKY. Who was General Woerner?

Mr. SANCHEZ. He helped in the preparation of the document.

Senator ZORINSKY. How many American military went with him to help him prepare it?

Mr. SANCHEZ. Five.

Senator ZORINSKY. Why did the Salvadoran Government request him to come down to make it for them?

Mr. SANCHEZ. He didn't make it for them; he helped them write it.

Senator ZORINSKY. Have you read the Woerner report? He says he prepared it in conjunction with them but that his request for coming down there to do it is classified, but I am sure you know what I am getting at.

Mr. SANCHEZ. Sir, again, I would prefer not to discuss the Woerner report in open session. Certainly I am willing to come to your office and discuss it privately since you have now seen the report. Although we helped them prepare it, it is still considered a document belonging to the Salvadoran Government. The only thing that I said was that in order to give this document distribution, any distribution, we had to have the approval of the Salvadoran Government, which we received and therefore you and Chairman Percy were given access to that document, sir.

Senator ZORINSKY. We almost had to subpoena the document in order to get it. That is how we really got the document. You tried to circumvent the request by sending up a condensed version of the document until it was pointed out to you that it wasn't the document. And finally, after the chairman here threatened a subpoena——

Mr. SANCHEZ. I beg to differ with you sir. I did not send you——

Senator ZORINSKY. That is exactly what was brought to us initially.

Mr. SANCHEZ. No, sir it wasn't. I beg to differ with you. The document that you received——

Senator ZORINSKY. I made a copy of it and I will show it to you sometime.

Mr. SANCHEZ. The document that was released to you and to the chairman, and the chairman made the copy available to you, sir, the only thing that I can say is that I believe the record is straight; that you, Mr. Chairman, are responsible for maintaining the security of that document, and if copies are being made and distributed——

Senator ZORINSKY. I didn't make a copy of the Woerner Report; I made a copy of the dummy document you sent me.

Mr. SANCHEZ. I would like to see that, sir.

Senator ZORINSKY. I would be happy to show it to you.

Mr. SANCHEZ. I did not at any time—you were not sent——

Senator ZORINSKY. None of the reference material was with the document until we insisted on getting our hands on it, and the only reason we got our hands on the real document is because other people in the Foreign Relations Committee had seen the document and knew what it looked like. I had never seen it so I wouldn't have known the

difference had other people not seen it. So don't say that since it was in my hands, security is dependent upon me because you showed it to other people.

Mr. SANCHEZ. No, sir, I did not.

Senator ZORINSKY. Other people had access to it.

Mr. SANCHEZ. I did not show that document to anybody else.

Senator ZORINSKY. Then you left it where people could look at it, then.

Ambassador ENDERS. Could I point out here, if I might, that the witnesses are now on their own time. I just wanted to point that out. We have been given administrative leave to participate in the parade.

Senator ZORINSKY. I don't think that parade is going to cost the American taxpayers what El Salvador is costing them, and I think this is more important.

In a continuation of its work for me on El Salvador, the General Accounting Office has pursued a seeming inconsistency between hostile fire payments to the U.S. Army personnel serving in El Salvador and the State Department reports to the Congress that there are no security incident against the same personnel. At GAO's request, the Army has reviewed these payments and concluded that, given the law, Army implementing regulations, in the judgment at that time, the payments were proper.

Therefore, would the State Department please explain how they could or why they did report to Congress that no security incidents against U.S. personnel were taking place, and would the Department also explain its statement that our personnel there were in secure, safe areas when in fact they were being paid on certification of being in imminent danger of being killed, wounded, or injured?

Ambassador ENDERS. They are two quite different provisions of law with two quite different purposes. The War Powers Resolution refers to personnel equipped for combat, and it refers to personnel introduced into a situation of actual or imminent hostilities. That is the governing language of the resolution.

We do not equip our personnel for combat, Senator Zorinsky, and we do not introduce them into actual or imminent hostilities. For example, our trainers are not in Morazan Province, now, out with the several battalions that are engaged in an operation there. They are not moving toward Berlin with the members of the relief force that is moving toward that. They are trainers.

Representative Crane, I noticed, referred to them as advisers. May I state again that they are not advisers in the sense that they do not accompany units in combat. They do not advise units on how to engage in combat.

Senator ZORINSKY. Ambassador Enders, let me read you something from U.S. News and World Report dated October 11, 1982, an interview of our so-called special trainers by a member of the U.S. News and World Report team.

Members of the United States military training mission in El Salvador earn their combat pay even though officials claim that they have yet to fire a shot in battle. The Army warrant officer training El Salvador helicopter pilots points to the bullet holes in his chopper and says nonchalantly, "The threat is always there." A Special Forces sergeant agrees. "All of my men have been shot at," he says without emotion.

These are American soldiers talking to an interviewer from the U.S. News and World Report. So I don't know if this is a different country we are talking about or a different war.

Ambassador ENDERS. It is the same country we are talking about. Members of the State Department and civilian agencies who are down there also get a danger pay because there are manifestly dangers that all of them are subject to; but the purpose of the War Powers Resolution and the specific terms of it are to govern the introduction of U.S. forces into combat or their preparation for combat. We are not doing either, Senator.

Senator ZORINSKY. Well, how dead is dead? Regardless of the technicality of the way the law is written—I mean a dead American soldier is a dead American soldier.

Ambassador ENDERS. And let us hope and pray that there are not going to be any dead American soldiers, but we lose diplomats, we lose AID personnel. We have not, to my knowledge, lost military assistance personnel, but we certainly can, in this country and others, and that is part of the risk of being overseas in our AID and diplomatic mission. We have lost a lot of diplomats in the course of the last 10 years, about one a year we lose, but they are not equipped for combat and they are not to engage in—

Senator ZORINSKY. If they are not equipped for combat, why do they carry arms?

Ambassador ENDERS. Well, we believe that they should in fact be able to defend themselves against personal attacks which could occur for almost any reason in that country.

Senator ZORINSKY. Then why don't the Ambassadors all carry arms in every one of our embassies?

Ambassador ENDERS. Well, the Ambassadors, in fact, move around with an armed guard.

Senator ZORINSKY. Yes; but not carrying arms in their hands.

Ambassador ENDERS. But we are not able, I don't think it is desirable or necessary to send an armed guard with our trainers.

Senator ZORINSKY. It seems to me that it is quite obvious that you want it to be that way and that is why it is going to be that way. I can see you are trying to rationalize. For instance, if anybody at this table read the Woerner report with a God-given brain, I can't understand how that person could think you can attain a military victory, yet that is what we are pursuing in El Salvador.

But my time is up now, I see.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

The hour is getting late by the time we get down here to this end of the table.

Mr. Chairman, first of all, let me just share with our witnesses some general observations and ask them to comment on them if they would. I was, like Congressman Crane, in El Salvador a couple weeks ago. I spent a couple of days there in pretty intensive meetings in which we met with virtually all the political leadership, the military leadership, labor groups, campesino groups, private sector people on a number of occasions, as well as the various political factions.

What I am about to say, and I say this as one of the authors of the certification process, is that, frankly, this process is turning into a farce. It really is not performing the function that we intended when we originally drafted the certification bill. Let me explain what I mean by that.

The certification process involved two parties as we drafted it. Obviously, it involved the legislative branch and the executive branch. That was the idea, to involve both of us, requiring, obviously, Presidential certification of certain conditions, which admittedly we all agree are essential, not just incidental but essential, if in fact peace is to come to El Salvador. We all agree that those are the sine qua non, if you will, of peace in that country.

Having established that relationship, a dual relationship, and with the three underlying purposes laid out in certification to: one, allow for a report to occur every 6 months as to how we were progressing on those essential elements; two, to provide primarily the administration with the necessary leverage in El Salvador, to give them that influence to insure progress; and three and very essential, to remind El Salvador that if those essential criteria, those essential conditions were not being met, if there was not progress on them, then, in fact, there was a limit to U.S. financial support, military support, primarily; that our aid wasn't unconditional, that progress had to be made in those areas.

That was the idea, and a good idea, I think we all admit today. I don't want to recite history, but we had a rather difficult time when we surfaced the notion. And in fact you will recall I tried originally to have certification occur more frequently than every 6 months. We agreed to having it every 6 months because the argument was made that otherwise we would create too many problems.

Now, the reason I say it has become a farce in some sense and irrelevant in some sense as it presently is functioning is that I don't see any consistency or credibility in the process I just described. There has been a breakdown in that process. Let me explain what I mean.

The administration has generally stated that its policy calls for a political solution in El Salvador, that there has to be a political solution, and that there can be no military solution in El Salvador. That has been stated ad nauseum, and I think we all agree. The problem has been that the stated policy of a political solution and the actual policy have been in contradiction.

Now, I don't support or buy the notion that the administration has been promoting just a military solution. What I think has been even worse than that, if that in fact were the case, is the sort of confusion over what the policy has been from the administration, and that in turn has created what I consider to be the most serious problem of all. That policy has created tremendous confusion in El Salvador.

Coming back from those meetings of 2 weeks ago, I never saw a people who are supposed to be united against one common foe so divided, so divided over the basic issues that we have identified as essential if peace is to come to El Salvador. You have Mr. D'Aubuisson wanting to leave the Assembly. You have the Ochoa-Garcia incident in the military. You have the private sector still fighting tooth and nail despite, I know, good, strong conversations by the Ambassador and by others that they ought to get their act together, still fighting

over whether or not that program ought to go forward. You have the very sectors that can make a substantial contribution to controlling human rights still not willing to make that commitment. So we have created great division in that country.

Now, how has the division been created in our own country? We have just in the last few months—and let's not go back prior to July 28. October 29 of this year, our Ambassador gives a speech to the chamber of commerce in El Salvador, a good speech—a darn good speech—when he says in effect that the Mafia on the right is as much a threat as the guerrillas on the left, and that if you don't understand human rights and you don't enforce it in this country, you are going to destroy your nation. In fact, I am all but quoting him, that you are going to destroy El Salvador.

He gives that speech on October 29. Within a week, the news report comes out that the administration is backing away from our Ambassador's comments. I presume, and I want to pursue this in a line of questioning, but I presume Deane Hinton doesn't give extemporaneous speeches. He is too much of a professional to do that. But yet the administration comes out and backs away from that position.

On December 3 the President in Costa Rica says he is going to certify no matter what, even though the Ambassador has said that if you don't do these things, you are going to lose some aid. Then on January 31 we certify anyway. It lacks credibility, I am afraid.

I don't think the Salvadorans know what to believe any more. They don't know which message to follow when you get our Ambassador saying one thing, our President saying something else, and the administration backing away. It is little wonder that they are confused as to what our policy is and what it ought to be.

Through this fiscal year, we will have spent \$748 million since fiscal 1979. We are approaching \$1 billion that we have expended of American taxpayer money, and what do we have to show for it? We are nitpicking on details. There are now 200 deaths a month, if you believe one set of statistics. Somebody else says 500 deaths a month. More disappearances, less disappearances.

We are arguing over the temperature, the degree of how sick the society is. The fact of the matter is it is so sick that it is about to die, and we are arguing over details. We have got a military situation that is divided in the country among those people. The economic situation is not improving at all.

They have even gone to the extent, despite \$748 million, of having people that we know are responsible for the death of American citizens out serving as officers in their military, using our military equipment that we provided with tax money, out on the streets, and do nothing about it. After \$748 million. And that is progress?

Where is there progress in that? So I have come to the conclusion in many ways, Mr. Chairman, that this is a farce. I think it is nice to have the report and nice to have the discussion, but unless we get in sync—and I agree with the Senator from Kansas—unless we are working together as the certification process really allows us to do, then we are wasting our time, in effect, because I don't think the situation resolves itself unless we start working together, and we haven't been.

We are debating what has happened for the past 6 months. No discussion about what we are going to do for the next 6 months. What are we going to do from here? Are we going to come back again in July and put charts up and say, well, there have been 175 deaths, or maybe 250 deaths, and we will have expended another, whether it is the administration figure of \$140 million or Clarence Long's figure of \$40 million, the point is we are going to be approaching that \$1 billion figure, and I don't think we are going to be any better off.

The left is doing better, it appears. No one is suggesting they are doing worse. They just took over a town of 30,000 people. I don't think anyone suggested that they have gotten \$1 billion in aid in the last few years, and they seem to be growing in strength and success. Where are we going? What is our policy going to be and are we going to make the certification process work?

It is not enough to just say you support it. I appreciate that. I think that is worthwhile. But we have got to make it credible. If we don't make it credible, if we are confused, if the administration sends different signals, then there is no way you are going to help the Salvadoran sector, the noninsurgent sector get its act together.

Let me stop there and ask for your comments on those thoughts.

The CHAIRMAN. There was a question mark at the end of that. We will give all of you equal time to answer a very provocative question and, I think, a very genuinely and strongly felt position by Senator Dodd, who has been certainly in the forefront of this.

Ambassador ENDERS. May I start the comments, Senator?

One is, you should not be surprised that Salvador is a deeply divided country. In fact, the whole problem of El Salvador stems from those divisions. We know, all of us, very well, the divisions that resulted from the land holding scheme, a system that was in effect before we became involved in the country. We know about the divisions of opinion between their very strong entrepreneurial class on the one hand, the big Christian Democratic Party on the other, about the division between the left and the right and the center.

One of the reasons why we have been so strong in promoting democracy in that country is, we think that only through democratic means can very divided peoples learn to live with each other, and that is why you cannot get a solution in that country any other way than through the democratic system.

I am not at all surprised that those divisions persist. I think that our purpose is to help the Salvadorans live within and gradually overcome them.

As regards mixed signals, yes they look at us and say our signals are mixed. They say, if we in fact go out on campaign, we may use up our ammunition, the war will be over suddenly altogether, but the supply to the other side goes on from Cuba and Nicaragua.

They say, how much is enough? You want us to change our society radically in a short period of time. How fast is going to satisfy you? And how do we know that your mood is not going to change in the course of this? Suddenly, the hurdle may be higher, or maybe somebody is going to come in and say, no, we do not like this program basically here. The United States is going to pull back.

They question how constant we are. They have to deal with a very wide range of Americans. They have to deal with the administration,

the Army, the Congress. They have to deal with television personalities, doctors, missionaries, an enormous number of Americans that are interested in El Salvador. They say, who is in charge? Whose signals, exact calibration of what weight to put on what do we follow?

And out of all of that, and you were down there at a time when there were, what, 17 congressional delegations there——

Senator DODD. No; there were two or three.

Ambassador ENDERS. There were 17 in January, plus a large number of public delegations. I am not saying they should not be down there. But these are people relatively isolated from the United States in terms of how its society works, who have to deal with all of us.

Senator DODD. Could I just interrupt you for a second? I understand what you are saying, but let me share one point with you there. I understand, and I thought maybe that was the case. I am not talking about the general public.

I will not identify the individual in El Salvador, but suffice it to say that one of the higher officials in both the political and military sphere said to me, it does not make any difference, it does not make any difference even if the ultra-right were to take over in El Salvador. Our perception is that you would provide the military aid. That is the perception of leadership.

Ambassador ENDERS. Let me tell you, I think there are two conflicting perceptions down there. One is that people who argue that no matter what we do——

Senator DODD. And they are going to get it.

Ambassador ENDERS. Other people now are beginning to wonder, no matter what we do, it will not be there, that the United States will back out, and either of those, either of those arguments prevents constructive action, change in the reform side or effective military action, and our problem and our danger is, we may get them caught between those two very conflicting impressions, in which they freeze and they do not know what to do.

You know, you will have encountered a lot of people down there, or if you have not, others have, who say, we know you are going to cut off aid. That is the first question they ask visiting Americans.

Senator DODD. My time is unfortunately up.

Ambassador ENDERS. Others may wish to comment.

The CHAIRMAN. I want to yield you 5 additional minutes so that adequate replies can be given to your questions.

Senator DODD. Thank you.

Mr ABRAMS. Senator, I do not think that our policy is that difficult to explain or to describe. If I could put it very briefly, it would be to help the Government of El Salvador resist the guerrillas while also pushing them to undertake the political, economic, and social reforms that ultimately are the solution to their problems, and that will make the guerrillas irrelevant.

So, we support the centrist sections of that society which have a similar view. I do not think they are confused about that. I think what they are confused about is, as Secretary Enders said, whether we are going to stick with it, and I think they are right to be confused, because no one can give them a guarantee. We are pushing them out on some very thin limbs. We are insisting that they go out on those limbs, and they are not sure we are not going to cut them off. And

they are confused, because they hear a lot of Americans who come down and who say to them, for example, I will devote myself to cutting you off, I will dedicate myself to cutting you off, including Members of Congress.

So, they are right to be confused, because our political system is an extremely confusing one. But I do not think it is the policy that is confusing. I think what confuses them is their uncertainty as to whether we are going to stick with them or just leave it behind us.

Senator DODD. Well, the October 29 speech and then the backing away from it by the administration, the December 3 guarantee of a certification by the President, you cannot tell me a month and a half in advance that does not send—what kind of a signal does that send? How serious are we if the President, 2 months before the certification process, says, of course, I am going to certify?

Ambassador ENDERS. The President said, on the basis of what he knew at that time, he would. He did not say he would certify, Senator DODD.

Second, the question is always a question as to what are the right tactics. Is the best tactic a speech by the Ambassador?

Senator DODD. Was that a sanctioned speech?

Ambassador ENDERS. Yes; that was a sanctioned speech.

Senator DODD. So everything the Ambassador said in there had been approved by the administration?

Ambassador ENDERS. Well, it has been approved in the State Department without any question.

Senator DODD. And it had been approved in the White House?

Ambassador ENDERS. It was not submitted to the White House, and it would not normally be submitted to the White House.

Senator DODD. The State Department agreed, but the White House did not? That is not confusion?

Ambassador ENDERS. There can be differences over what the right tactics are. On the whole, I think, generally speaking, the ambassadors can lose their effectiveness if in fact they take their arguments out in public. It is a question as to whether this was the right way to do it. I personally think it is the right way to do it on occasion, but it cannot be done—

Senator DODD. Dean Hinton does not give a lot of speeches.

Ambassador ENDERS. He does give some, actually, but this was a very strong speech, and I think it was personally justified, and sent a very clear message, but there are costs to that, to, as you well know—

Senator DODD. I did not mean to interrupt.

Ambassador ENDERS. I think the important thing here, we are engaged in an exercise in persuasion, but I cannot emphasize enough, I think, the inherent contradictions that we are in the certification process with regard to this, that they have to read exactly what dosage are the Americans going to come up with, and who is going to come up with it. Who can tell us? It is hard.

Mr. SANCHEZ. Senator, I returned from the area Sunday, and I quite agree with you. We have them confused, totally confused, and their problem is one, again, which has been mentioned at this table three times now, and I think that you will agree with it. What they are concerned mostly with is the fact that we are going to stay with

them. Are we going to cut them off? Our credibility, sir, is very, very low.

Now, who are these people? Forget the extreme right and the extreme left. These are, if you may, the moderates in the middle that we deal with, that we have been dealing with, not only in the military but in the government, and these are the people whom we confuse the most, because on the right they will say, they will not leave anyway, and on the left, well, you know, we want them out. It would be nice. They should leave. They should never have been here.

But the moderates are the ones that, unfortunately, are the ones who feel this pressure, and they are the ones who are going to be the first ones compromised when this pressure is applied in its final form. Then, who is going to win out of this?

That we have confused them, you are quite right. We have, and we should find a process in order to establish—to reestablish our credibility with these countries, and if we go through this process every 6 months, it is the form, I think—that is why I agreed with what was said earlier, that we should also include the other side, because in this forum, every 6 months, who do we criticize? Who do we talk about? The Government. The Government. The Government. Not the people who are causing the problems in that country.

Senator DODD. We are not providing them with any aid. I know the point that Senator Helms is making. If we want to confuse this process even more, we will start certifying for the left now. I mean, good God, if you want to make this thing even more farsical, that is going to do it. I mean, let us get down to brass tacks. No one here endorses the left. No one is supporting the insurgents. That is not the issue. The issue is whether or not we are going to continue to support with millions of dollars the Government down there. That is the issue.

Why are we going to try to add an element to this debate that is already complicated by suggesting we are going to have to certify the left? I think that is absolutely going to make certification a laughing stock.

Mr. ABRAMS. Senator, how do you know how hard you want to fight to prevent the left from taking over until you understand what they are and what they want to do in El Salvador?

Senator DODD. Who doubts that for God's sake? We all know what they want to do.

Mr. ABRAMS. I want to show you some of the mail that I get.

Senator DODD. Let us not start sharing mail. But why do we want to add that to the certification process? My God. I had one of the generals down there say, "Why do you not add to the certification that if the ultra-right takes over, then you will not—"

The CHAIRMAN. Are you objecting to this amendment? You can vote against it. You have not even seen the wording of it.

Senator DODD. Well, the Senator indicated he is going to offer the same amendment he offered before, last fall. He withdrew it then because he did not have the votes on the thing, because we basically agreed there was no point in the thing, except that it would add a dimension to this that would make it even more farsical.

The CHAIRMAN. I concur with the administration that the process as it now stands puts them in the position of telling us only one side of the story, and that is not—our job is to get the whole truth out

here and let them judge it on the basis of that, and I have no objection at all to saying that we ought to be telling the whole story. I do not see what the debate is about.

Senator DODD. Well, they say in the report that the left causes some of the violence. They cannot tell you who causes what. They say the bulk of it comes from the right, but they certainly make it clear that the left is responsible for a significant part of the violence down there. That is in the report. We did not require it, and they tell us that.

Ambassador ENDERS. But is it a material factor, Senator Dodd, that you get continued increased support from bases in Nicaragua? Should that not affect certification? Is that not one factor?

Senator DODD. It is one of the factors.

Ambassador ENDERS. Does it not make some considerable difference? It is just not present in the judgment at all at the moment.

Senator DODD. Well, I think it is in the judgment of those of us who sit on this committee.

The CHAIRMAN. Is there anyone who wants to add anything further to the question asked by Senator Dodd?

Mr. SANCHEZ. Mr. Chairman, let me add one thing, because Senator Dodd brought up a concern that as a taxpayer, I am also very concerned about, and that is the amount of money that we are spending.

Senator DODD. It is a lot.

Mr. SANCHEZ. But I must also remind the Senator that the other side is not dealing in peanuts either. When you look at the amounts of money that the Soviet Union is putting into Cuba, which has now exceeded \$4 billion a year, not in any way accounting for all the equipment, the military equipment that they are receiving, in value, if you can assign a value to it from 1981, when they had the big increase, when they went up to over 65,000 tons, to last year, in which they probably exceeded that tonnage.

So, this is what we are competing with, Senator.

Senator DODD. I am going to ask you specifically in a few minutes about details on military equipment, but I appreciate your comment.

General, did you have anything to say?

General NUTTING. Senator, if I might, I would like to suggest that perhaps the issue is not whether we should provide aid or not, but what is the outcome that we would like to see achieved for the people of El Salvador, and in the interest of the United States.

I would suggest that the United States does lack credibility anywhere in Latin America today, and partly because of the action that was taken to terminate aid to the Somoza government, not that I would argue that was not the right thing to do. If you back up 10 years, aid was terminated to the Government of Vietnam. We have been involved several times in the termination of aid to governments that were working in a given direction.

I think we have to be concerned about the outcome, and recognize that it may be expensive. We are involved in a form of war I suggest that we are neither institutionally able to understand very well, nor are we organized to cope with very well. There must be some kind of consensus achieved on what the problem is and what the United States should do in its own interest about that problem. I think we are making progress in that direction, but we really are involved in a contest of wills, and what is the outcome we want?

I think everyone would agree that there is not achievable a military solution in El Salvador, but I also would suggest that there probably is not achievable the ultimate political solution without some kind of military involvement to restore public order and security. Every time there is a threat made either in San Salvador or in Washington to terminate the U.S. aid, it adds to the question of our will to contest for some kind of an agreeable outcome. That adds incentive to the guerrilla forces, as we saw happen in Vietnam.

There has to be some kind of an agreed solution that we are willing to achieve. No one can put a dollar figure or a manpower figure on what the ultimate cost might be, but I think we do have to agree that there is an outcome that is in our own interest, and march toward it.

Senator DODD. I do not disagree with you at all. That has been the problem.

The CHAIRMAN. I have a couple of questions to put to you, and others that I would submit for the record, because we are running quite late today, and we have our public witnesses beginning at 2 o'clock. The answers to these questions can be very brief, but we will leave the record open for them to be expanded on.

I would just conclude on the points that Senator Dodd has made. What our objective is, I think, is stability in that area. The cost of instability, of insurrection, of success by the leftist insurgents there, would be an inducement to the spending of billions of dollars by them. They would be so encouraged they would increase it from \$4 to \$8 to \$10 to \$12.

We have to draw the line someplace, and the President of the United States has drawn the line here, and we are trying to back him up and support him. What we are questioning is the results, the progress there, and are we putting it in the right direction, and that is what I would like to come back to, but I do not doubt the goal of peace and stability and having a democratic republic down there that can be stable and long lasting, and set an example for other areas is worth the effort that we are putting in now.

And those who would storm in my office, as they have, and just have us totally walk away from the situation, I think, are totally unrealistic. Absolutely would walk away from the problem and leave it in the hands of those who would just chop us up, not there, but every place else in the world.

In my opening comments, I indicated several places where I have been disappointed with the progress. Could you explain what the Government is going to do in order to address, say, the four problems that I mentioned in my opening statement, the dismissal of charges against Lt. Lopez Sibrian in the land reform workers murders. Is there anything further we can do about this, other than denounce it as disgraceful, as we all have?

Ambassador ENDERS. We have not abandoned this case, and it is quite clear that future assistance would be very unlikely to be recommended by the administration in the absence of progress in this case. That is a very live issue for us, and it symbolizes really in one man what is wrong.

The CHAIRMAN. Is there anything further we can do to encourage movement in the churchwomen's murder trial?

Ambassador ENDERS. Well, we are going to have to use every means at our disposal to keep this front and center, but we also have to recognize that we are trying to make them use their justice system to punish the murderers of our countrywomen, and that means, among other things, that if the defense which has been appointed by the court uses all the devices at its disposal to ask for a retrial or delays and so forth, it is very hard for us to say that it cannot do that.

But within the context of trying to get them to use their system to judge these people, we are going to have to keep pressing. Frankly, we are convinced that they are pressing, but it is something that will need very careful supervision.

The CHAIRMAN. Secretary Sanchez, you pointed out some encouraging things in the armed forces, and I agree that there is room for some encouragement, but what can we do about the failure of the armed forces to curb and punish violence by its own personnel still, after all that we have done to try to—through training and so forth, to help?

Mr. SANCHEZ. Sir, again, we have seen improvement in this area, and I used some figures in my presentation of the people in the armed forces who have been detained because of infractions. They are moving certainly in the right direction. On criminal cases, if I may state this, this is what happened in the Lopez Sibrian case. Their system of justice, if it is a criminal case, the military passes it to the civilian courts, and again, sir, I think if we can help them to straighten out their courts, their system of justice, that is one of the ways where they will probably be able to do a better job than what they are attempting to do.

The CHAIRMAN. What has come to me much more clearly in this hearing and certification than any other time, and it comes as a cause for deep concern now more than even before, is the absence seemingly of viable political and social institutions in El Salvador. How do we expect a society, for instance, to practice human rights when there are no institutions to protect those human rights? It cannot all be done through teaching and training and encouragement. There have got to be institutions there that will punish violaters of them.

Could you elaborate somewhat, if you care to, on the term used in the certification document, "the systematic ineffectiveness of the entire criminal justice system?" What is the underlying cause for that, and what can be done and should be done by the political leadership, all of them down there that are working in the direction of reform?

Mr. ABRAMS. Well, Senator, the real cause, I think, is the chaos to which Tom Enders referred before. That was the period in which the system fell apart. The violence continues, and therefore the criminal justice system continues to be largely ineffective, certainly in political crimes. It is not a mystery. I mean, judges, others involved in cases are intimidated or suborned.

We have thought, for example, of whether one should not try to encourage more discipline by the military itself. The traditional way of handling these cases was to throw somebody out of the military and turn them over to the courts, which traditionally had been the better way. If the courts are not going to act, then maybe the military should do the disciplining itself. There are solutions that people in El Salvador are talking about, but ultimately, I think it is not going

to be possible to restore the criminal justice system there any more than it has been in other countries with a major guerrilla war until the level of violence has declined even more than—much more than it has today.

But there are other ways of trying to get at the same problem.

The CHAIRMAN. Let me draw on an illustration as to how really bad it is. And I say this trusting that the press will report it accurately down in El Salvador as coming from the U.S. Senate as a point of deep concern. If there is ever to be economic recovery in that country, there must be a cooperative relationship with a lot of people and a lot of countries.

I happen to know of an El Salvador company owned by one of the 14 prominent families that was supplied a basic product, fertilizer, several years ago. Credit was about \$1.4 million and a personal guarantee was provided by the prominent family for \$1.1 million of that \$1.4 million. That was not paid. The counsel retained by the American company withdrew when he alleged that he received threats on his life and the life of his family.

Over 3 years, El Salvador's courts have failed to provide any means of recovery. Obtaining legal representation from someone whose life and whose family's life was threatened, is rather difficult. Is this a normal situation in El Salvador? Is that a unique case I am pointing out? What can we do to guarantee fair treatment and prompt payment in this case and try to convince them? Just as we have counseled not just with El Salvador, we have counseled with President Murbarak about improving the bureaucracy, and he counseled with us about improving our bureaucracy and aid. Both we sit down and talk about it. Are we talking about things like this that really destroy the credibility of the government?

Mr. ABRAMS. We are. And the problem, of course, is not unique. I do not know of other cases—I am sure there are a good number of them, and I am sure that in the other cases the explanation is very similar—where a lawyer or a judge was intimidated. The only way that that really is going to be settled is when some form of order returns to El Salvador. That is one way of defining the goal of American policy there. But I cannot give any hope that it is something that is going to happen, for example, in the next 6 months before the next certification.

Ambassador ENDERS. Could we have the details on that particular case? Although we have had political cases that have come to our attention of intimidation—

The CHAIRMAN. I can get all the details.

Ambassador ENDERS. We would like to pursue that one.

The CHAIRMAN. Fine. Very good. The company is the Olin Co., fertilizer division, since acquired by Mobil. But the debt is owing to Owen Corp., as I understand it. I will provide all the details to you on that.

This morning's press reported that Robert D'Aubuisson's threat to resign from the assembly, I wonder if you could give us some updated background on whether or not you expect the rightwing elements to abandon the National Unity Government and how serious is this situation?

Ambassador ENDERS. Well, we do not know what will happen on this today and in the next few days. Clearly, the assembly is just learning, is just finding its way, that it does not have—that it must act in a cooperative basis with its members and they must learn how to work with each other.

There has been a revolt against what was considered to be arbitrary actions by the chairman. I think this is part of the learning process of parliamentary life, Mr. Chairman, and that we should encourage this process. People have got to learn the habits of democracy. I do not know whether this is going to result in a change in the composition of the assembly or not.

I will say that I think it is important that these factions have to learn to live with each other. They have very different views.

The CHAIRMAN. Just two other quick questions coming from public critics of the certification process. One has indicated regarding testimony that you gave, General Nutting, in your last appearance with the committee, that human rights training cannot possibly account for more than 3 percent of the instruction provided Salvadoran troops by U.S. trainers. Could you comment on that assertion? Is that a correct assertion?

And then could you give your own candid assessment of the human rights observance in the Salvadoran armed forces and the progress or lack of progress that you have seen?

General NUTTING. Yes, Mr. Chairman. I could not give you a very accurate figure on the content of human rights training. We do conduct for a portion of the regular armed forces—the Army, Navy, Air Force—training that is both tactical in nature, technical in nature, and professional.

Each of those types of training does have a human rights content, a citizenship content that I would think, giving you an estimate, probably does range somewhere between 3 and 5 percent in terms of the actual program of instruction that is laid out for each of those training courses.

However, I think it is important to recognize that our trainers, wherever they may be at work, do extend that formal content in informal ways and place their own personal emphasis on the importance of that kind of military performance, acknowledging that it is not only a moral imperative but a strategic imperative.

And I think there is good evidence within the military institution in El Salvador, they acknowledge the need and the important need for and the importance of popular support if they are going to continue supporting reforms and indeed achieve some of the progress they have in the recent past.

I hate to refer to that curve over there, but that is one of the measures, unfortunately. Another measure is the amount of emphasis placed by the high command on the importance of improved personal performance within the security forces. There have been several instances that I cited in the certification document that indicate that emphasis.

I think also the support of the military institution in the first place, acknowledging the need for reform and repeated reemphasis and recommitment to the reforms that are underway does convince me that they have made the commitment and they do have the intent, and a good effort is being made.

I would repeat the fact that we in the past year have probably trained something on the order of 10 percent of the total armed force in El Salvador. And I would remind you that that armed forces is operating on a period of conscription. So some of the units that we have discussed in terms of improved performance that were trained now approaching 1½ or 2 years ago are beginning to turn over, and we are now faced with new groups of people in units that once were trained that still need that kind of encouragement. It is a dynamic process.

The CHAIRMAN. Thank you very much.
Secretary Abrams.

Mr. ABRAMS. I just wanted to add, Mr. Chairman, if my memory is correct, it is 42 hours of human rights classroom training, which is not an insubstantial amount, to which is added the fact that in El Salvador the International Committee of the Red Cross conducts a very substantial amount of human rights and law of war training for the Salvadoran soldiers.

Finally, I would add that I think the most effective thing that we do in that training is to show and tell the Salvadoran soldiers how American professional soldiers behave. And it is the professionalization of the Salvadoran Army that is ultimately going to be the most effective single thing we do in reducing human rights violations by it.

The CHAIRMAN. Thank you very much.

Senator Zorinsky, can you give me some estimate as to about how much time you would like?

Senator ZORINSKY. Ten minutes.

The CHAIRMAN. And Senator Dodd? Let us just say we would have a deadline, self-imposed deadline, of I would think—could we finish up in 10 minutes each?

Senator DODD. No, I need more time. Mr. Chairman, I need 20 minutes, 30 minutes.

The CHAIRMAN. What is your timeframe? We now have run beyond. You are able to stay on? Should we put it this way then? Senator Zorinsky, would you assume the Chair? I will go down to the youth luncheon quickly and then be back. Senator Dodd, then.

Senator DODD. I will take the Chair from then.

The CHAIRMAN. But I will be back as soon as I can for the protection of the administration. Now, I will say this. Left with the mantle of responsibility, you will treat our honored guests in a way that you would like to be treated yourself, as you always do. We will then, if you want to, pick up right now, and I will be back in 20 minutes.

Senator ZORINSKY [presiding]. Thank you, Mr. Chairman.

I would like to get back to the U.S. News and World Report article in the October 11, 1982 issue, which reported a series of conversations with American military trainers on the attacks against them. Why was not a section 21(c)(2) report filed by the President, and why weren't these attacks mentioned in the State Department reports to Congress?

We have reports from the administration indicating some attacks, but the attacks referred to in U.S. News and World Report were not mentioned in the administration reports. And in response to your earlier reply to me, Tom, while the War Powers Resolution is different from the provisions in law for payment of hazard duty pay, I am

referring here to section 21(c) (2) of the Arms Export Control Act. Ambassador ENDERS. They are different.

Senator ZORINSKY. Could you answer specifically why those incidents referred to in U.S. News and World Report were not put in the administration reports when Congress was notified?

[No response.]

General, did I hear you right when in reply to Senator Dodd you stated that a military victory by itself can never be attained in El Salvador as a political victory could never be attained by itself but you need military pressure in order to encourage the other?

General NUTTING. Yes, Senator, I expressed that view.

Senator ZORINSKY. Then you did actually make the comment that no matter how much money we pour into training the El Salvadoran Army, no matter how much equipment we infuse into the country, we could never attain a military victory against the guerrillas in El Salvador?

General NUTTING. No, that is not exactly what I said. I was agreeing with the statement that Senator Dodd made that there is a consensus that we are not striving to achieve a military victory. And I believe that is true. The policy that is being pursued does not seek a military victory, but on the other hand I think recognizes that there is a need for military performance in this case because the insurgency has proceeded to that level of activity.

Senator ZORINSKY. In your estimation, could we attain a military victory without our own personnel becoming involved in a war?

General NUTTING. Yes, I believe so. I recognize ultimately the solution to all the complex problems that exist in El Salvador must embody a political degree of progress that helps resolve conflict within that country. I do not think at this point that it can be achieved without a level of police or security force or military force activity to help restore public order and security so that the political evolution that is underway can take place.

Senator ZORINSKY. But you feel that our current military aim there is to keep the status quo, just to keep the war from getting any worse but not getting any better and tying the arms of our trainers down there just to encourage a continuation of a war?

General NUTTING. No, certainly not. We do not want to endlessly continue a war. But I believe the effort is to underwrite a sufficient level of police and military effort that will restore sufficient public security—

Senator ZORINSKY. Only the El Salvadoran people can do that. Now, Senator Helms mentioned Allende being overthrown because the huge majority of people wanted him overthrown. He did not extend that to Somoza's situation, to Nicaragua, although I have an inkling that a huge majority of the people, some of them in retrospect not enthused now, were helping with the revolution. At the time of the Nicaraguan revolution, about 95 percent of the populace was united in their effort to overthrow Somoza.

Unfortunately, this country in no way can control the internal events of another nation. But it seems our country continues to try to control the internal events of other countries. We are going to tell Israel how to conduct their affairs. We want to tell Lebanon how to

conduct their affairs. We are going to have South Korea conduct their affairs on our behalf.

We are going to tell the Salvadoran Government. If I were an official of the Salvadoran Government, I would be humiliated. One thing that the people in Latin America want, is respect, sovereignty, and the ability to conduct their own internal affairs without the intervention of another power.

Now, this in no way means I support a Marxist takeover in Latin America, as many people on this committee may want others to believe. But I say let us ask the American public what they want. And I will tell you what the American public wants because I have heard enough from the American public about it. They do not want this Nation trying to dictate the internal events of other countries. They do not want their tax dollars thrown into a bottomless cesspool and pit while Americans face a chaotic economic condition themselves in this country.

And so General, I respect you as a military man, and I respect people in Congress as politicians who are versed in what the people of this Nation want. But let me tell you something, the day of this Nation seeking to guide and dictate internal events of other countries has long gone past because economically and militarily we can no longer sit on that many boiling pots.

And it disturbs me when you say we cannot win a military victory with what we are doing. I come from the school that says blockade El Salvador and assure no other weapons get into the guerrilla side and the leftist side and stop our own weapons from going in.

It is also very important to involve the nations of the region in seeking a resolution of this war. We are not a Spanish-speaking nation. There are Spanish-speaking nations that seek in conjunction with our country to bring harmony and peace to the people of El Salvador. I have a strong suspicion that our country is not ready to let that happen down there, so it is not going to happen.

What makes us think that we are so great and omnipotent that we can jump around Mexico and not use their offer to serve as a catalyst to bring people to a peace table? There are other Spanish-speaking nations. Costa Rica and Venezuela for example, willing to extend more of a helping hand politically in trying to bring people to the peace table than we will allow to happen.

General, my concern is—and I am not raising the specter of Vietnam again—that when you get advisers or other military personnel in the position of a status quo war, you can drain the economy out of a country and never win that war. I am sick and tired of going back to Nebraska, which is a conservative State, to face questions about our policy for which the administration has no answers. Those people back there say, when you fight a war you fight it to win or you do not fight it.

General NUTTING. I agree with a great deal that you say. I wonder if I might respond. I would like to observe first of all once more, if I may, that we are involved in a form of war that is very complex and that takes advantage to a certain extent of our institutional processes in arriving at national consensus and decision on what actions to take.

Now, I have lived in that part of the world long enough to agree 100 percent with you that the last thing any Latin American individual or government body wants is intervention, and they continue to

make that point. And I think that is being respected by the process that is underway now in response to requests from the El Salvadoran Government and which in fact are encouraged by just about every other government in Latin America. And that is the provision of U.S. support which is assisting the evolutionary process of democratization in El Salvador.

Now, I would as a soldier like to say that I, too, would support some kind of a decisive military action that would solve the problem within the next 6 months or within the next 2 weeks. We all would. But we are faced with a form of war that is not amenable to that kind of solution.

If it were possible to establish a land, sea, and air blockade that would prevent the introduction of weapons that support the guerrilla forces, I would be all in favor of it. The situation that is underway there that has been used in the past in every guerrilla insurgency in the history of the world is not amenable to that kind of decisive action.

And you therefore proceed with an intermixture of political, economic, social, psychological, and military actions which taken altogether in this instance are showing some progress in the professionalism of the armed forces, slow though it may be, and hopefully, the construction of institutions that will reduce conflict within that society.

I would like to give you a report on the situation that exists in El Salvador today to give you a measure of what kind of effort we are making. We have 32 military trainers today in El Salvador plus six people who are located in the military group. Six are in the defense attaché office and there is a visiting team of two people there from the Southern Command.

Now, when you compare 32 U.S. trainers in El Salvador that are trying to help a 30,000-man force cope with the kind of active insurgency that is underway against the 2,000 Cubans, the Russians, the 150 or 200 East Germans, Bulgarians, PLO people in Nicaragua that are all underwriting the offensive capability of the guerrillas, there is not much balance to the effort.

Senator ZORINSKY. Is it not intervention when the U.S. Ambassador says publicly that the El Salvadoran Government would not last 6 months without us? Do you not think that is a very deep intervention into another country?

General NUTTING. I would think it improper to critique what the Ambassador says as representative of my President. I think he is in a pretty good position to evaluate the kind of progress that that Government is making and the importance of U.S. aid to that progress.

Senator ZORINSKY. The point I make is that there are other countries which also have a vested interest in Central America. You know the countries as well as I do. And I cannot understand why we do not make as big an effort politically as we do militarily for the involvement of the other Spanish-speaking nations.

Tom, I had an argument on the phone with you one time about what the President of Mexico said with regard to resolving the problems of this region. You said that by your interpretation it did not come out the way I had understood it. And then I had to call the Mexican charge d'affaires. He said my interpretation most certainly was accurate. And

all of the opportunity in the Mexican offer became international, political rhetoric.

When I see signs, when I read documents, classified documents seriously questioning our ability to achieve a military solution, I conclude that we must find a political solution.

I am no fool. Until the will of this administration becomes such that they want help and they will allow other nations to become involved as deeply as we are, not militarily but politically, in the resolution of this problem, we are going to continue right on this same path to nowhere.

Ambassador ENDERS. May I say a word, Senator? I think the people who are most interested in the solution are the people in Central America, and they have expressed their will very clearly, Senator. Costa Rica is a Spanish speaking democracy, almost as old as ours, and they hosted a conference in October that developed a negotiating approach for the region, which had other regional countries involved in it. Honduras was there on the same basis El Salvador was there.

Those are the people that have to live with their problems directly at the time, and they indeed are in favor of a negotiating approach to this. But what they want to see is that that negotiating approach is based on some clear, identifiable principles, and one of those principles is that the results should be democratic institutions, and also the results should be that the foreign advisers leave.

Now, that is there. You should consult them, and don't think only that other countries outside have the final answer. The Latin Americans generally, as the General says, support the kind of evolution that has occurred in El Salvador. They generally want to see it. They certainly don't want us to go and leave them in the lurch.

Senator ZORINSKY. Tom, I applauded, like you and everybody else, the free and open elections in El Salvador, and as soon as D'Aubuisson's party won, everybody was ready to kamikaze themselves. So don't tell me about all the euphoria that exists and about everybody wanting to do the right thing. You know that's not true when things don't turn out the way we like it. I guess the bottom line is what is wrong with letting the Salvadoran people determine the future of their country?

Ambassador ENDERS. I agree with that, and that is what the purpose of our policy is.

Senator ZORINSKY. Thank you.

I turn it over to you, Senator Dodd.

Senator DODD. Thank you very much.

First let me apologize to all four of you. I appreciate your patience and I will try not to take too much more time. Just a couple of things.

First of all, Ambassador Enders, can I ask you whether or not you have any idea yet what your fiscal year 1984 request is going to be for military and economic assistance to El Salvador?

Ambassador ENDERS. Yes; we have, in fact, some ideas.

Senator DODD. Not what you spent in 1983. That is not the question.

Ambassador ENDERS. We are not ready to make those public.

Senator DODD. When will we have those?

Ambassador ENDERS. It will be very shortly.

Senator DODD. There was a New York Times article on how much is going to be spent; apparently there is a fight brewing on how much was going to be spent in 1983. Has that been resolved?

Ambassador ENDERS. I think the committees involved, or at least their chief staff members, continue to have differing views. We have a very clear view of what the meaning of the continuing resolution is and what we will propose.

Senator DODD. So you will go forward with the money, the existing funds that were—

Ambassador ENDERS. There are two criteria which govern, we believe. One criterion is spelled out in the continuing resolution itself, and that is that no more shall be provided in 1983 than was provided in 1982. What was provided in 1982 in the economic assistance category was, aside from Public Law 40 and development assistance, \$105 million into appropriations.

So we think that is one limit, and the other is that we shall not—you have to justify, the word used in the Foreign Assistance Act, meaning that arguments have to be presented to the Congress, the relevant committees, including this one, for the expenditure of the funds that are actually to be used under the continuing resolution. So in other words, you have to meet two criteria. It can't be more than last year and it also has to be funds that have been justified. Well, funds were, in fact, justified on two occasions.

Senator DODD. Let me ask you if we could do something. These numbers get thrown around a lot. There has been, I think, some confusion, both here in the committee and outside as well, as to exactly what we have been talking about. Can I ask you to go back? I go to the \$748 million figure. That is a total figure I have for everything, and I think I am right in the ballpark on that or very close to it. I am not just talking military assistance now.

Could you break down from 1979 forward for the committee exactly what we have spent, what you project to spend in 1983, and I think you ought to make, I would like you to make a justification for that 1983 expenditure based on what you have just told me, but maybe expand it a bit, and then if you could submit that at the same time that your 1984 figures come in so we have it broken down by ESF, military, economic as well.

Ambassador ENDERS. I would be glad to do that.

Senator DODD. General Nutting, Senator Biden was here and you were talking about the military side of this whole question, and the command and control issue is obviously key. I presume that is a significant part of the training that goes on in the United States. Was Colonel Ochoa ever a student of ours in the United States?

General NUTTING. He was not a student in the United States. I believe that he may have attended a course in the School of the Americas in Panama, but I will have to verify that.

Senator DODD. My point is this. What would have happened to a Colonel Ochoa in our armed services if he had disobeyed an order from a higher ranking officer?

General NUTTING. I think it is fortunate that today the American people have a very disciplined and obedient armed force in the first place. I think there is evidence that we over a period of time can transfer some of the principles on which we base our conduct to our military colleagues around the world.

A Lieutenant Colonel Ochoa in the U.S. Armed Forces anywhere probably at worst would have been court martialed, and at best might

have been reassigned. I cannot quite imagine a conflict of that extent occurring today in our Armed Forces; but we do have people who think independently, and they are encouraged.

Senator DODD. Encouraged to the point where they would not come back in unless the commanding officer resigned?

General NUTTING. Not to that extent.

Senator DODD. At best, he would be reassigned? That would happen in our Armed Forces?

General NUTTING. As I say, I cannot see that kind of a conflict taking place in our Armed Forces today. I think in all probability he would be subjected to a court martial.

Senator DODD. A serious breakdown in command and control.

General NUTTING. I think that concern for that indiscipline has been shared throughout the officer corps in El Salvador and there is general agreement that such indiscipline cannot be tolerated.

Senator DODD. Going back to the Hinton speech, on page 2 of his speech, and I am quoting here, he said, "The 'Mafia' must be stopped. Your survival depends on it. The guerrillas of this Mafia, every bit as much as the guerrillas of Morazan and Chalatenango, are destroying El Salvador."

I have already asked you how sanctioned or approved, that speech and let me just paraphrase what I think you told me. Correct me if I am wrong. That speech was sanctioned and approved by the State Department. There may have been some breakdown in communication between the State Department and the White House, and that was the reason for the reports which indicated that Ambassador Hinton was not as authorized as he thought in giving that speech.

Ambassador ENDERS. It was authorized by the State Department, by me. There were questions raised, I think, which reflected in the press reports you heard about whether this was the right way to pursue goals that are equally shared by all.

Senator DODD. That was a White House opinion, not a State Department opinion?

Ambassador ENDERS. I cannot say that I think everybody in the State Department thought this was the way to proceed.

Senator DODD. We all know who the leadership of the guerrillas on the left are. They are not shy about identifying themselves. Who is the leadership of the Mafia, the guerrillas on the right, who Ambassador Hinton was talking about? Are we talking about people in leadership positions?

Ambassador ENDERS. I think he was talking about the phenomenon that we are now all too familiar with of members of the security forces. I think this is—the instances we have are much more on a local level, national guardsmen at night in some cases, members of some of the police forces at night or off-duty taking military actions or vengeance into their own hands.

Senator DODD. Who is the leadership, though?

Ambassador ENDERS. This is why I think we are—this is one of the questions that we have on the nature of certification. It is not an organized movement. It is not a structure that has a headquarters that gives commands. It is a spontaneous phenomenon, not, as far as we can see, orchestrated. It has been very prevalent. It is somewhat less prevalent. It is certainly still there.

We have seen officers involved in the security forces and on much rarer occasions the armed forces have been involved in it. It is not a unitary phenomenon.

Senator DODD. We do not know who they are?

Ambassador ENDERS. We do know quite a lot about some of the individuals that have been involved in it, but it does not have a command and control structure. It does not have a headquarters. It does not have a radio out of which it gives commands. It does not issue weapons from a central warehouse, et cetera, et cetera. In other words, it is not a unitary phenomenon. It is a lot of people who are taking law into their own hands and are committing injustices. As far as we can see, it is almost spontaneous.

And, Senator, if I could just underscore this, this is important because if the central government or army is in fact weakened in any way by its own actions or by ours, then we feel this will occur again on a much larger scale, this phenomenon, what we feel is anarchy. That is what has gradually been overcome, in part, I think, through the certification process.

Senator DODD. Are you suggesting the Ochoa incident was not an isolated one, that this is possibly more endemic or epidemic?

Ambassador ENDERS. No; I am talking about killing.

Senator DODD. I understand that, but you said a breakdown in the military, a lack of military support.

Ambassador ENDERS. Well, I think the phenomenon that we have here, if in fact we were to withdraw our military support from the country, is a radical weakening of the government, but all the people you are talking about now, they would not go away. In fact, I think they might swing back into action.

Senator DODD. On the human right figures, it appears, if you take all of those various groups, there is great disparity among them. Some identify like 190, and other groups were as high as 500. But I guess what you are looking at is an overall average.

Ambassador ENDERS. If you have a chance, look at the annex.

Senator DODD. Yes; and the explanation of how you get there. It is a new method you use.

Ambassador ENDERS. What happened was, after the last certification, some of the other groups that have been collecting statistics changed their methodology, and they began to include in them claimed deaths as a result of military actions claimed by both sides, and often these claims are quite inflated or unreliable. They are not corrected with subsequent information. It is very hard to tell what you have. So we basically kept the military deaths out of this thing, and we are trying to deal with human rights issues, noncombatants.

Senator DODD. One of the things you did in your earlier certification, I think, last July, was to identify disappearances, or at least make an effort to, based on a report from Americas Watch. The number of disappearances is still very high. I did not see a chart on that one as such.

Ambassador ENDERS. We have one on this. It is on page 6 of the certification. And you will see there the relevant figures.

Senator DODD. I am sorry, it is.

Ambassador ENDERS. They are very hard to interpret. I think it is much harder to interpret than the other data. It is much more shadowy.

Senator DODD. On land reform, you identified the number of requests for titles. I think the figure, if my memory serves me well, goes up around 13,000 in a 6-month period, the actual requests.

Ambassador ENDERS. The petitions go up—

Senator DODD. From 37,000 to 50,000.

Ambassador ENDERS. They went up around 10,000.

Senator DODD. The actual provisional titles are around 2,000.

Ambassador ENDERS. That is right.

Senator DODD. Why is that number not higher?

Ambassador ENDERS. You may recall the last time we certified, we had the reverse phenomenon. We had a substantial number of titles, provisional titles being issued, but the applications had fallen way down, because in fact there was an attack on land reform. So as you get the applications suddenly taking off again, then the bureaucratic system is working slowly behind it, but we do not believe—there is no reason to believe that those applicants are not going to get their provisional titles.

Senator DODD. That is moving relatively well, the provisional—

Ambassador ENDERS. It is a pipeline.

Senator DODD. Let me ask as well, we have spent in cash and bonds some \$78 million on phase 1, about \$3 million—

Ambassador ENDERS. Not we have. They have.

Senator DODD. About \$3.5 million on phase 3. I realize there is a significant disparity in the amount of land available under phase 1 as opposed to under phase 3. However, considering the relative affluence of phase 1 landowners as compared to the affluence of phase 3 landowners, why are we not doing a better job of compensating phase 3 landowners, realizing again there is more land under phase 1, but not \$78 million versus \$3 million by comparison in dollar amounts paid?

Ambassador ENDERS. I think the key here is in the definitive title issuance. Frankly, they were dealing there with a relatively small number of very large farms, and those titles are being granted to cooperatives, and you will see that they have in fact got on much more, although there is still only about 10 percent or less than 10 percent of the total number of cooperatives that have received definitive titles. But as they do that, they engage in competition.

You can look at the number of definitive titles, which is unfortunately very low in phase 3. It is still only 408. Now, that is a question of how many people you can actually get out on the land to measure it, establish all the legal documents which are required for that. I am not saying it is a good result, but that is very much linked with the question of compensation. I think it remains fundamental, Senator Dodd, that the absence of funds to pay compensation means that we are only maximizing the resistance of landlords.

Senator DODD. I understand that. I was not minimizing that. It just seems to me that given the relative affluence of the very large landowner as compared to the phase 3 landowner, and given the amount of cash and bonds made available to phase 1 relative to phase 3 landowners, it just seems to me tremendously disproportionate.

Ambassador ENDERS. I think if you allow for the fact that phase 1 was the one that started first—

Senator DODD. I understand that as well. And I understand there was more land.

Ambassador ENDERS. Approximately almost a year. Second, you are dealing with farms which, because they were large and often affluent farms, had their land documents in order, rather than small peasant plots which are basically described by custom and word of mouth, quite a different phenomenon. I think it is going to take very long, but I would agree with your implication that getting the definitive titles is the whole purpose of phase 3. You have to end up there.

Senator DODD. And also, I would assume there would be an effort to have some balance in the distribution of a very limited amount of funds. The land to the tiller program is an extremely important program. Phase 1 is more of an economic question, whereas phase 3 is more political than economic, I presume.

Ambassador ENDERS. I think both phases were basically governed by political objectives. I do not think anybody is making the argument that the farms under phase 1 really had to be changed to cooperatives run by their workers in order to produce more. In fact, the danger was they might have produced less. They have not, as far as we can tell, in many instances, produced less, but in some they certainly have.

Senator DODD. Well, to underline what I am saying, the presumption is that the more affluent phase 1 landowners are being compensated; that there is a presumption that they are being compensated because of their political influence, and that that is the reason they are getting the lion's share of the funds, whereas phase 3 landowners are smaller landowners, less influential with certain powers that be, and that that is one of the reasons for the tremendous disparity. I realize the others are legitimate reasons as well.

Ambassador ENDERS. The reality may be more complex. Some of the phase 1 and phase 3 landowners have been reluctant to accept or apply for compensation because they thought that that sanctioned the whole process, and as you mentioned earlier, some of them do not accept this as final.

Senator DODD. General, let me just deviate for 1 second because you are here and I was not sure if I would get a chance to bring it up. There was a meeting recently, I gather, in the old bunker in Managua where some U.S. officers—I do not believe you were there—from the Southern Command were meeting with military commanders and leaders of the Sandinistas. What was the substance of that meeting?

General NUTTING. Senator Dodd, the personnel involved were not members of the Southern Command. It was principally Major General Odum, the Army Assistant Chief of Staff for Intelligence, and I think perhaps one or two staff people that were traveling with him. I believe it also included, in addition to Ambassador Quainton, the resident member of the small military group that still exists there as a form of communications, if it is useful.

General Odum, since assuming his position, has not visited, or, in fact, he never has visited Latin America before. He is a Sovietologist, and he felt it was time in his service to orient himself on events in Central America. He did travel to visit my headquarters in Panama. He then went not only to Managua but to Tegucigalpa and San Salvador, essentially on a mission of personal professional education and orientation on the problem in the Caribbean Basin, which I think he

agrees with most of the military people is now a new strategic equation which we have to face.

There was an opportunity for him to visit with one or two of the commanders. Ambassador Quainton, as I understand it, arranged that meeting. I understand it was in the bunker, which I am not familiar with and never have seen, and to the best of my knowledge, it was a pretty free exchange of various points of view on both sides.

Senator DODD. Which commanders did he meet with? Do you know?

General NUTTING. Daniel Ortega was one.

Ambassador ENDERS. No, no.

General NUTTING. Excuse me. Joaquin Cuadra.

Senator DODD. But it did not have any specific purpose? It was not to allay any fears or to communicate any specific messages regarding the concerns that have been raised on the Honduran border?

General NUTTING. No; it was an opportunity to discuss mutual concerns. I cannot recite in any detail what subjects were covered, but the purpose was simply to provide orientation for him in his present staff position.

The CHAIRMAN. Senator Dodd, I think, the hour of 2 o'clock having arrived, regretfully, we will have to draw this first session to a close now.

Senator DODD. Mr. Chairman, may I make a request? I apologized to our witnesses before you came into the room for the lateness of the hour. That is one of the disadvantages of the seniority system, a system I know I will grow to love, but one of the present problems with it is waiting down here at the end of the table.

I would like, if I could, to maybe submit some additional questions. The staff has done a very good job with questions.

The CHAIRMAN. We will have additional questions to be inserted into the record. We will keep the record open until those questions have been answered.

I think appropriately because of your comment, your previous comments to just close by recalling to mind the situation I faced in the Soviet Union in November 1980, when I was there, across the table from Brezhnev and his colleagues and Ambassador Watts and Bob Gelb and myself on the other side. We sat there for hours, and the subject of superiority constantly kept coming up, and he would turn and say Americans were always trying to be superior. It will be parity, but not superiority.

At the end of the session, I finally said to myself, just as we were excusing ourselves, I think, despite what he said, that it has been proven that Americans do have superiority. After a rather amicable last 20 minutes of that several-hour session, he turned after the translation to me and said, what do you mean by that? I said, well, it is perfectly obvious we have superiority. We have been here for hours. We have had coffee after coffee. I noticed you left once, and I noticed Mr. Gromyko left once, and you noticed Mr. Gelb, Ambassador Watts, and Chuck Percy have never left the room.

After translation, he looked a little startled, and I said, but in utter candor, let me say this to you. I am in terrible pain. [General laughter.]

I think you have demonstrated the superiority of the executive branch over the legislative. We have been in and out, and we will

quickly excuse you now, and thank you very profusely for an extraordinarily informative session this morning. Thank you.

The committee will not recess now. We will take up immediately with our second panel.

The first panel for this afternoon will please come forward, Mr. Orville Schell, Mr. John Stanbury, Mr. Andrew Messing, Dr. Alfred Gellhorn, Dr. Ronald Godwin.

General Nutting, thank you again very much. We appreciate it. Secretary Sanchez, thank you very much, indeed.

I am going to ask, out of deference to our witnesses, and also out of deference to the very heavy schedule that we have, that all conversations be carried on outside the room, please. The committee will be in order. We have a very full agenda this afternoon. We have three full panels, 13 witnesses, on an extraordinarily important subject.

Discussion will focus on three major themes, human rights, the political process, and the judicial process in general, and for U.S. citizens in particular. In addition, Mr. Doherty will speak on the question of progress in land reform.

I understand that all witnesses have been notified that because of the heavy schedule, though their text will be carried in full in the record as if given in full, each witness will be limited to 7 minutes, and we will have to stay very strictly to that. Otherwise, we will not finish the hearing today.

I welcome our first panel, who will deal with the general subject of human rights in El Salvador, and so our distinguished audience today can know the identification of each person, we will start with Mr. Orville Schell, Americas Watch Committee, Washington, D.C., and I will give the title of each of our witnesses.

STATEMENT OF ORVILLE H. SCHELL, AMERICAS WATCH COMMITTEE, WASHINGTON, D.C.

Mr. SCHELL. Mr. Chairman, it is a great pleasure and privilege to be here.

In addition to being chairman of Americas Watch, I am a stuffy Wall Street lawyer, a senior partner of a firm there, and I come here to testify on behalf of the Americas Watch. I have submitted written testimony, and with it is a report which the Americas Watch prepared just before certification, and therefore my testimony incorporates that by reference. We have also submitted to you the previous reports prepared by the Americas Watch, and it is our view that these four reports which have been submitted clearly make the case that certification is not warranted and is contrary to the law.

Unless there be any misunderstanding on my position here this afternoon, let me say up front that I consider certification to have been outrageous. We do not, however, need to dwell on the reports of the Americas Watch.

My few brief remarks will be limited to the facts set forth in the State Department's document of certification. That document in and of itself convincingly makes the case against certification. Relying on that report, the facts of that report, stripped of their conclusory language, let me make the following brief observations.

There are two significant conditions for certification required by law. First, it must be demonstrated that El Salvador is making a concerted and significant effort to comply with internationally recognized human rights. Second, it must be shown that the government is achieving substantial control over its armed forces in order to avoid political murders, et cetera. I believe we can all agree that internationally recognized human rights certainly include the right not to be murdered or tortured, and the right not to be kidnaped or disappear without trace, and the right not to be subjected to government terrorism.

Let us first look at murders. The State Department's document alleges there were no higher than 200 deaths a month in the last 6 months of 1982 which were attributable to political violence. Later they tell us the actual deaths were certainly higher, but let us stick to their first statement, not over 200 murders a month, while to those of us who care about human life, the number of these deaths matters a great deal.

For the purposes of measuring compliance with U.S. law, it does not matter whether the number of these deaths is 100 a month or no higher than 200 a month or even 400 a month. As reported by Tutella Legal, any one of these amounts is enormous, given the size of El Salvador. A larger proportion of that population is now being murdered in political violence than in any other place in the world. One must look at Afghanistan, Cambodia, Iran, and Guatemala to discover comparable savagery.

The State Department report candidly gives some of the flavor and sordid details of just how these killings and tortures took place. The State Department document tells us progress is being made because the number of political murders was higher previously, apart from the fact that the law says nothing about progress. What kind of progress is this? Is it progress in state terrorism toward the goal of killing all those politically suspect, or are there just fewer candidates left alive to kill?

Let us move on to disappearances, that is, people kidnaped by government forces who just disappear into thin air. The State Department, apparently relying on the Salvadoran press reports, states that on the average in 1982 there were 38 disappearances a month. The Catholic archdiocese believes there were many more. But even taking 38 as admitted by the State Department, if taken as a proportion of the Salvadoran population, this is comparable to the number of disappearances during the worst period of political violence in Argentina, and probably any place else in the world today.

How on Earth can a document containing these facts conclude with a certification of El Salvador that human rights are being recognized?

Going to another aspect of the report, the State Department tells us that the El Salvadoran Government is laying the basis for a democratic, pluralistic government. Against this conclusory statement the report acknowledges specifically that security forces dealt a setback to efforts for political reconciliation by jailing FDR and MNR leaders.

Incidentally, the State Department report neglects to state that the MNR is a legally registered party, and several of those arrested remained disappeared. I might say parenthetically that the State Department document also neglects to discuss the murder of many Christian Democratic officials which have been reported in our report.

Is the Government of El Salvador laying the basis for democratic pluralism when its security forces kidnap opposition leaders, or when these leaders remain disappeared and others imprisoned without charges, or when Christian Democrats, the party of former President Durate, once supported by the United States, are murdered so frequently?

Finally, the certification document reports that in January 1983, a total of 141 regular military personnel were under detention for abuses of authority. This is designed to demonstrate that the government is gaining control over its armed forces, and to create the impression that these members of the military or a substantial number of them are detained for prosecution for political violence against citizens.

Americas Watch has now investigated similar assertions which were the keystone of the certification in July, and has found that the overwhelming number of cases where military were alleged to have been arrested were not for human rights violations.

So, basically, Americas Watch does not feel that you need to look further than the certification document itself to determine that these two critical conditions imposed by the law enacted by this Congress are indeed not being met.

May I presume to offer a few recommendations? Because I know that it is as important that policy be talked of today as in the past. We know, of course, there is no procedure for Congress to act on certification. We do, however, recommend that you take two steps. First, it would be appropriate for the Congress to inform the President and the Department of State that you consider certification of El Salvador to be unwarranted. Second, procedures for increased congressional participation in the certification process should be put in place.

One of the values of certification is that it gives the United States a tool with which to exert influence on the Salvadoran Government to protect human rights. The fact is, the present administration has completely undercut the usefulness of that instrument by making it plain to everyone that certification is to be taken for granted. Perhaps if there was a greater congressional role, the process of certification might regain some of its desired muscle.

I think it is interesting that in Guatemala yesterday a number of people were threatened with execution under decrees of their kangaroo courts, and that these executions were contrary to the undertakings which the Guatemalan Government had made to the Inter-American Human Rights Commission and, I believe, even to this Government. Give them something, and they will take something else. Namely, they will start executing people again.

One final comment. The administration argues that military aid to El Salvador is required for geopolitical reasons. We do not take a stand on any geopolitical position. We do believe, however, that human rights, up to a point, are not something to be weighed in the balance against geopolitical considerations. What do I mean by, up to a point? I mean that murder, torture, such things are not negotiable. They are part of international law. They are part of the law of war. You just do not do them. And you cannot tolerate them.

Rather, the geopolitical interests of the United States require that we as a nation stand for something, in opposition to the totalitarian and authorization forces in the world. We believe it morally and practically important that the United States stand for human rights.

We cannot stand for human rights so long as we identify ourselves with a government that engages in the barbaric practices of the Government of El Salvador as those practices are described by the State Department itself in its open report.

Thank you, Mr. Chairman.

[Mr. Schell's prepared statement follows:]

PREPARED STATEMENT OF ORVILLE H. SCHELL

Thank you, Mr. Chairman. My name is Orville Schell. I am Chairman of the Americas Watch Committee and Vice Chairman of its sister organization, the U.S. Helsinki Watch Committee. I served as a public member of the United States delegation to the Helsinki review conference in Madrid. I am also senior partner in the New York law firm of Hughes Hubbard and Reed and was formerly President of the Association of the Bar of the City of New York. I appear here today to testify on behalf of the Americas Watch.

Annexed to my testimony is a report prepared by the Americas Watch that sets forth our reasons for believing that certification of El Salvador is not warranted because the requirements of U.S. law are not being met. This is the fourth lengthy report on El Salvador published by the Americas Watch during the past year: three published on the occasions of the three certifications; one analyzing the methodologies employed by the U.S. government and private groups in reporting information on political violence in El Salvador. In our view, these reports make out an overwhelming case against certification.

Yet it is not necessary to look at our reports to determine readily that certification is not warranted. The evidence is at hand in the certification document submitted to you on January 21 by the United States Department of State. Stripped of its conclusory language, it too is a powerful argument against certification.

The Introduction to the State Department's certification document says (at p. 3) that civilian deaths attributable to political violence were "no higher than 200 a month in the last six months of 1982." This is contradicted in the section on statistical methodologies (Appendix C) where we are told that, "The actual deaths are certainly higher." Though the number of these deaths matters a great deal to anyone who cares about human life, for the purpose of measuring compliance with U.S. law, it does not matter whether the number of these deaths is 100 a month, or "no higher than 200 a month" or about 400 a month as reported by Tutela Legal, the human rights agency sponsored by the Roman Catholic Archdiocese of San Salvador.

Any of these totals is enormous. We must look to Afghanistan, Cambodia, Iran and nearby Guatemala to discover comparable savagery anywhere else in the world. El Salvador is a tiny country and, even if the State Department's figures are used, it may well be that a larger proportion of the population is now being murdered in political violence there than any place else in the world.

Add to the murders the disappearances. According to the Salvadoran press reports relied upon by the State Department (Section II, p. 6) there were 38 a month. According to the Roman Catholic Archdiocese's human rights agency, there were many more. Either way, the number is enormous. As a proportion of population, the number is comparable to the worst period of political violence in Argentina and, probably, worse than any place else in the world today.

Again, you have only to look at the certification document itself to get the flavor of these murders and disappearances. The State Department says (Section III, p. 10):

According to information received by the Embassy, soldiers entered the town of Santa Elena on November 22. These soldiers assembled the town-folk in the central plaza and through an informer selected between 12 to 15 young men. These young men were taken away in two olive drab vehicles. Their bodies were found along the adjacent highway the next day.

Or consider what the State Department says the Embassy reported about another incident (Section III, p. 9):

Heavily armed men in uniform entered the La Florida Cooperative in the Department of Santa Ana on the night of November 20. These men rounded up 11 campesinos (4 managed to escape) and tortured and killed them.

Elsewhere the certification document itself discusses the kidnapping and disappearance of a member of the staff of the El Salvador Human Rights Commission, America Fernanda Perdomo, (Section II, p. 6) and of a member of the staff of Socorro Juridico, Patricia Cuellar, and her father, Mauricio Cuellar (Section II, p. 6 and Section VI, p. 27).

The way the residents of Santa Elena were murdered, the way the residents of La Florida were tortured and murdered, the way America Fernanda Perdomo was kidnapped and "disappeared," the way Patricia Cuellar and Mauricio Cuellar were kidnapped and disappeared, is the way that thousands of Salvadorans have been tortured, murdered and kidnapped. This is what is meant when the certification document speaks of political murders now running at "no higher than 200 a month." This is what is meant when the certification document tells us of an average of 38 disappearances a month.

The certification document tells us "progress" is being made (Introduction, p. 2) because the number of political murders was even higher previously.¹ What kind of progress is this. Is it progress in murdering all those persons who are politically suspect? Are there fewer of them left to kill? Are there fewer persons left alive who have not fled El Salvador and who still dare to speak critically of the government or who still dare to associate with others critical of the government? Is successful state terrorism progress?

The certification document also tells us (Section IV, p. 20) that the Government of El Salvador "is laying a basis for a democratic, pluralistic government." Yet it acknowledges (Section V, p. 25) that:

Elements of the security forces of the country, however, dealt a setback to efforts for political reconciliation by jailing several FDR leaders still operating in San Salvador. In October 1982 elements of the security forces arrested several FDR/MNR leftist leaders and held them incommunicado for several days.

Here, the certification document neglects to report that the MNR is a legally registered party; that several of those "arrested" remain disappeared; that U.S. Ambassador Deane Hinton at first told the press that he was "reasonably certain" the government had nothing to do with these abductions; and that no charges have yet been brought against those persons whose arrests were subsequently acknowledged (see pages 30-36 of the Americas Watch report for an account of this episode). The certification document also neglects to discuss the murders of Christian Democratic officials (see page 23 of the Americas Watch report for an account of these murders).

Is the Government of El Salvador "laying a basis for a democratic, pluralistic government" when its security forces kidnap opposition leaders? Or when some of those opposition leaders remain disappeared and others remain in prison without charges? Or when Christian Democrats—the party of former President Jose Napoleon Duarte whose government the United States supported—are murdered so frequently? What kind of democratic, pluralistic government is possible when any political affiliation other than that of the extreme right makes a person a likely target for disappearance, murder or imprisonment without charges?

According to the certification document (Section III, p. 10), "In January 1983 a total of 141 regular military personnel were under detention for abuses of authority." At no place is there any indication of the number of military personnel detained and prosecuted for political violence against Salvadoran citizens. The Americas Watch has investigated the assertions about the disciplining of Salvadoran troops in the previous certification and has established that the majority of those cases—and, possibly, the overwhelming majority—were unrelated to the political violence that has victimized the citizens of El Salvador (see pages 67-77 of the Americas Watch report). Accordingly, what justification is there for even the modest assertion in the certification document (Introduction, p. 2) that:

Efforts to control abuses by members of the armed forces were the subject of increased attention by the Government of El Salvador and continued to show slow progress.

¹ Even by the State Department's figures, the number of disappearances has not declined.

Given the magnitude of the abuses by the Salvadoran armed forces, much more that "slow progress" is required. Yet even that is difficult, if not impossible, to detect.

In the view of the Americas Watch, the Government of El Salvador is *not* complying with the requirements in U.S. law for certification that it:

- (1) is making a concerted and significant effort to comply with internationally recognized human rights;
- (2) is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces.

Again, in our view, you need look no further than the certification document itself to determine that these conditions are not being met.

We are aware, of course, that the certification law provides no procedure for Congress to act on certification. Yet we believe that it would be appropriate for Congress to inform the President and the Department of State that you consider certification to be unwarranted.

We are aware also that proposals for increased Congressional participation in certification are being formulated and submitted. The Americas Watch has not endorsed any specific proposal. Given the Administration's insistence, however, on certifying despite the evidence that it itself has marshaled demonstrating that certification is not warranted, we endorse the principle of greater Congressional participation in the process.

One of the values of the certification law is that it provides the U.S. Government with an instrument that it can use to exert influence on the Salvadoran Government to protect human rights. To a considerable extent, we believe, the Administration has negated the usefulness of that instrument by making it plain that certification is to be taken for granted. A value we see in a greater Congressional role is that the Salvadoran Government could no longer be so certain of certification. Accordingly, more effective pressure to protect human rights could be exerted.

One final comment. We are familiar, of course, with the geopolitical arguments offered by the Administration for maintaining military aid to El Salvador. As a human rights organization, the Americas Watch does not take positions on geopolitical questions. Yet we do not believe that it is appropriate to consider human rights as something that must be weighed in the balance against geopolitical considerations. In our view, the geopolitical interests of the United States require that we, as a nation, stand for something in the world. In opposition to the totalitarian and authoritarian forces in the world, we believe it is important that the United States stand for human rights. We cannot stand for human rights so long as we identify ourselves with a government that engages in the barbaric practices of the Government of El Salvador as those practices are described in the certification document itself.

Thank you.

HUGHES HUBBARD & REED,
New York, February 3, 1983.

HON. CHARLES H. PERCY,
Chairman, Senate Committee on Foreign Relations,
Washington, D.C.

DEAR SENATOR PERCY: I appreciated very much the opportunity yesterday to appear before your Committee in connection with the certification for arms aid by the United States to El Salvador. I was particularly gratified to be able to participate in the question period where I thought there was a constructive discussion by all concerned on what policy should apply for the future.

On my way back to New York, which was rather an extended trip due to the weather, I had the opportunity to reflect on the hearing and come to several conclusions which I should like to offer to you and your Committee for consideration.

Looking at the testimony overall, both during the morning by government witnesses and the afternoon by those from the private sector, there seemed to be at least tacit acceptance that, at whatever level they exist, there are indeed continuing acts by the Salvadoran government which contravene the conditions for aid established in Section 728(d) of the International Security and Development Cooperation Act of 1981 P.L. 97-113. Equally clear, it seemed to me, was the fact that the policy of the present administration of supporting the Salvadoran government irrespective of non-compliance with those conditions required that the administration develop some *modus operandi*, some argument

to avoid those conditions. Those arguments and that *modus operandi* are clearly set forth in the Certification Document. They have done the best job they can, but they have a perfectly impossible case.

Assistant Secretary Elliott Abrams, it seemed to me, was most candid when, if I understand him, he put the order of priorities as first, military assistance to El Salvador to put down the rebels, and second and later, if at all, some consideration of human rights. His frank testimony clearly puts human rights in quite a junior category to a military force strategy.

This leads me to ask whether that should indeed be the policy of the United States for the future.

I think not, for to do so would not be in the best interest of the United States either for moral or pragmatic reasons or indeed for our long-term security. Unfortunately that has been our policy for sometime and I suggest that that is one of the reasons why we got into such a mess in Vietnam and why we are in such a horrible mess today in Central America. This is a mess which yesterday was clearly recognized by both the Republican and Democratic members of your Committee.

My associates and I in the Americas Watch and in the U.S. Citizens Helsinki Watch (which is working diligently in an attempt to promote human rights in the Soviet Union and satellite countries) believe that in framing future policy human rights must be one of the paramount considerations.

Human rights are not only an important moral concept and at the very foundation of this country, but they are also practically useful as a means toward our security. If one thing has been made clear by such enterprises as the Helsinki Conference in Madrid it is that the most distinguishing characteristic of Western democracy over Soviet communism is our respect for the individual and for human rights. People of the Third World, including those in Central America, are looking for alternatives to their totalitarian and authoritarian oppressors. If they can see clearly the presence of human rights in the basic policies of the West and their absence in the countries of the East, they will be in the long run turn away from communism and towards the West. If we persist in supplying military force to support their oppressors and in doing so clearly demonstrate that we do not stand for human rights, they are more likely to turn toward Soviet communism. Thus, the very purpose of our military intervention, to save Central America from communism, far from achieving that end, will drive the peoples of Central America into the Soviet arms.

Simply stated then, I and my associates, among whom are included business, professional, educational and scientific leaders of the United States, urge that in arriving at future policy your Committee consider human rights as a paramount and an essential ingredient.

Yesterday, I testified that human rights were not something that should be weighed in the balance against geopolitical considerations. I qualified that statement slightly by saying "up to a point." I explained my qualification as representing, I hoped pragmatism and realism that in certain situations countries might have need for a temporary period of anti-terrorism and laws to put down insurrection. These laws, however, should be well guarded to provide as much due process as possible, should be temporary in duration and should never contravene the basic human rights against murder, torture, kidnapping and the like by the state. They must not condone or give opportunity for state terrorism to thrive. These are principles which just cannot be derogated or our Western civilization will lose everything.

In conclusion then, it seems to me that the two conditions proposed by the law which was the subject of your hearing are consistent with the policy which we urge. The problem is how those conditions are respected. If they are to be respected given the clear and admitted thrust of the present administration, Congress is just going to have to get itself into the act to keep them honest.

Again, thank you very much for the opportunity to be with you yesterday and my apologies for these, I am afraid, all too lengthy *mots d'escalier*.

Very Sincerely,

ORVILLE H. SCHELL,

Mr. ORVILLE H. SCHELL,
Hughes Hubbard & Reed,
New York, N.Y.

FEBRUARY 28, 1983.

DEAR MR. SCHELL: Thank you very much for your letter dated January 3, which I believe was sent on February 3 following your testimony before the Foreign Relations Committee on the Presidential certification for El Salvador.

I very much appreciate your taking the time to develop further your thinking on the certification and on the larger issue of human rights in the region. I believe that the certification language will receive much more detailed consideration during our consideration of the fiscal year 1984 foreign assistance authorization legislation. As you are aware, the February 2 certification hearing raised considerable concern about the state of the criminal justice system in El Salvador, and I believe that will receive our special attention. I am aware that Ambassador Hinton has made inquiries of the Department of State as to areas in which legal authorities like yourself and Mr. Stephen Kass could be useful in advising or assisting Salvadorans in strengthening the system there. I have written personally to President Magaña conveying the sense of our concern on this issue, as well.

Thank you again for sharing your thoughts with me.

Sincerely,

CHARLES H. PERCY,
Chairman.

January 20, 1983

Second Supplement to the

REPORT
ON
HUMAN RIGHTS
IN
EL SALVADOR

Americas Watch Committee &
The American Civil Liberties Union

January 20, 1983

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American Civil Liberties Union

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This report was written by Cynthia Arnson and Aryeh Weier. We express our gratitude for assistance and for information to Benjamin Cestoni; the Comision de Derechos Humanos de El Salvador; Monsenor Freddy Delgado; Heather Foote of the Washington Office on Latin America; the International Committee of the Red Cross; Juan Mendez; Oficina de Tutela Legal del Arzobispado; Jay Peterzell; Tom Quigley; Flora Riener; Socorro Juridico Cristiano; Universidad Centroamericana Jose Simeon Canas; and to the U.S. Embassy in San Salvador.

The work of Roberto Alvarez and of Cynthia Brown on our previous Report and July 20, 1982 Supplement provided indispensable background information for this Second Supplement.

Introduction

This Second Supplement is published a few days before President Reagan must certify that El Salvador is meeting certain human rights conditions if U.S. aid and arms sales to that country are to continue. It brings up to date the information we published on January 26, 1982 in our Report on Human Rights in El Salvador* and that we subsequently published in our July 20, 1982 Supplement** to that Report. As with the previous reports, we have delivered copies of this report to the President and the Department of State calling on them to refuse to certify because, as the information we have assembled here demonstrates, the government of El Salvador has not met the conditions for certification for military aid and arms sales required by the International Security and Development Cooperation Act of 1981 (the "foreign assistance act").

This Second Supplement differs from the previous two reports in that it focuses almost exclusively on two of the conditions for certification required by the law:

- 1) That the Government of El Salvador is making a concerted and significant effort to comply with internationally recognized human rights;

*Available from the Americas Watch or the ACLU in a Vintage Books edition, 312 pp., \$3.95.

**Available from the Americas Watch or the ACLU, 272 pp., \$6.00

- 2) That the Government of El Salvador is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces.

These conditions for certification address the main concerns of our organizations. Even so, we note that some information relevant to the conditions for certification dealing with land reform is to be found in the State Department's responses to questions from Representative Clement J. Zablocki which we reproduce in Appendix D. Also, our discussion below of the kidnappings, disappearances and murders of activists in the FDR and in the Christian Democratic Party is relevant to the conditions for certification dealing with elections.

We do not discuss the murders of Americans in El Salvador because this question has been widely covered in the press and because the murders of the four U.S. churchwomen in December 1980 are discussed in reports published by the Lawyers Committee for International Human Rights.

We omit here the discussion of our criteria for dealing with matters as violations of internationally recognized human rights as these are set forth in our previous two reports. In addition to presenting information here on developments during the current certification period, we also deal with some developments during the previous certification period to the extent that this

information bears on the State Department's assertions in the July 27, 1982 certification.

Aryeh Neier
Americas Watch
Committee

Morton Halperin
American Civil
Liberties Union

Summary and Conclusions

Tutela Legal, an agency sponsored by the Roman Catholic Archdiocese of San Salvador tabulated 2,339 killings of civilians by the security forces and by paramilitary forces allied to them during the last six months, 5,399 during 1982.

It is important to emphasize that these are the known political murders. Almost certainly, there were many more. We decline to speculate as to the actual numbers. Also, we decline to speculate as to whether the number of political murders is increasing, decreasing, or remaining at the same level. All that is known is that the number of reported and verified political murders during this certification period was approximately the same as during the previous certification period.

In the view of the Americas Watch and the American Civil Liberties Union, the number of reported and verified political murders demonstrates that the human rights situation is worse than ever. We arrive at this conclusion for the following reasons:

- 1) the number of political murders is cumulatively greater. At least 2,339 more persons were murdered during the past six months; at least 5,399 more persons during the past year.

These would be staggering numbers anywhere. In a country as tiny as El Salvador, they would defy belief were it not that we have become so accustomed to the level of atrocity.

- 2) the number of political murders continues to be enormous each month even though - by now - a very large number of those persons in El Salvador who are politically suspect are dead or have fled the country, or have been terrorized so that they no longer make their views known. Political murder is so routine that it continues at such levels despite what must be increasing difficulties in finding appropriate targets for murder.
- 3) it is plain that the government of the United States has given away such influence as it might have been able to exercise to stop the political murders. As best we can determine, the Salvadoran security forces are entirely confident that U.S. support will continue - no matter what. From President Reagan on

down, it has been made plain to them that they are entitled to this confidence. Accordingly, occasional efforts by the United States to promote more respect for human rights - as in Ambassador Ninton's October 29 speech - can be shrugged off lightly. Statements by members of Congress, editorials in the world press and reports by human rights groups can be similarly disregarded. No level of atrocity - even such a level as demonstrated by the reported and verified figures for political murders during the past six months, the past year, or the past three years - will deter the United States from providing even more assistance to the armed forces committing those murders.

We anticipate, on the basis of past experience, that the Reagan Administration will tell the U.S. Congress and the American public that the human rights situation is improving. As we have pointed out previously, improvement is not a criterion specified in the certification law. The law requires "a

concerted and significant effort" to protect human rights and "control over all elements" of the armed forces to "end ... torture and murder of Salvadoran citizens by these forces." Even so, we comment on the anticipated claim of improvement, or progress.

If a mass murderer killed 20 persons one year and only ten the next, would we say that was improvement, or progress?

If a rapist assaulted 20 women one year and only ten the next, would we say that was improvement, or progress?

Or would we accuse the mass murderer of 30 murders and the rapist of 30 rapes? And would we be horrified that the murderer or the rapist is still at large?

The answers to these questions seem so obvious that the point that is made here would not be worth making except for the Alice in Wonderland logic that has been employed by the Reagan Administration in its periodic pronouncements claiming improvement, or progress.

Yet the claim will almost certainly be made yet again by the Reagan Administration. Because of this, we point out - again - that during 1982, violence shifted significantly to the countryside, making it more difficult for human rights groups to secure reports or to verify them. In addition, violence against human rights monitors (see below) and attacks on journalists diminished their effectiveness and confined those who document

political murders increasingly to the vicinity of San Salvador. For these reasons, it is likely that the number of political murders was more underreported in 1982 than in 1981 or 1980.

Yet whether there were as many, more, or fewer political murders in 1982 than 1981 are not the criteria for measuring compliance with the certification law. The proper question is posed by the law:

Is the Government of El Salvador making a concerted and significant effort to comply with internationally recognized human rights?

The answer is no.

The policy and practice of political murder by the Government of El Salvador remain unchanged. Accordingly, in our view, the President and the Department of State would demonstrate contempt for U.S. law by again certifying El Salvador.

U.S. law requires that, to warrant certification, the Government of El Salvador must control its own armed forces to end torture and murder. In the July 27, 1982 certification, the principal evidence cited by the Department of State to indicate compliance with this condition was the claim that 109 members of the Salvadoran forces had been disciplined during the first half of 1982. In this Second Supplement, we examine that claim in detail and find that it can be most charitably described as misleading. At most, 44 of those cases involved "human rights"

violations considered serious enough to warrant prosecution; the term "human rights" was defined so broadly that even these 44 cases do not necessarily involve the political violence victimizing the Salvadoran people; and at the time the figures on the disciplining of members of the armed forces were cited in the July 27 certification, and for at least several months thereafter, the State Department lacked information on these cases beyond the gross figures supplied by the Salvadoran armed forces and disregarded the advice of the U.S. Embassy to use the information with "proper caveats" because "the Embassy cannot confirm it independently." (See Part II for fuller discussion of this matter.)

The information we have gathered indicates that there have been no disciplinary actions and no prosecutions against members of the Salvadoran armed forces for even such notorious crimes against the Salvadoran people as the massacre at San Antonio Abad and the torture in the National Police headquarters of a volunteer for the Salvadoran Green Cross. Again, the proper question is posed by the certification law:

Is the Government of El Salvador achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces?

Again, the answer is no.

Part I - Human Rights Violations

The day draws near in which President Reagan will certify before Congress the situation of human rights in El Salvador. This notwithstanding, the denunciations of illegal abductions continue, the discovery of mutilated cadavers and of people given up for disappeared continue. The news of guerrilla ambushes and harassment, and the burning of buses continues, as if all of this had become the daily bread of the Salvadoran people. On the 6th of this month, in an afternoon newspaper reporting an international cable, I read with astonishment that at least 36 people were murdered in the last 24 hours, the majority of them victims of the death squads. I do not wish to interpret this news as a dire omen for the new year which is beginning, but rather as an excess of madness that must be brought to a halt...

-Monsenor Arturo Rivera y Damas,
homily in San Salvador's Metropolitan Cathedral, January 9, 1983.

In the first two weeks of this month, at least 68 human beings were murdered in El Salvador under circumstances which are familiar to everyone here. Everyday we receive new reports of disappearances under tragic circumstances. American citizens in El Salvador have counted among the murdered, among the disappeared. Is it any wonder that much of the world is predisposed to believe the worst of a system which almost never brings to justice either those that perpetrate these acts or those that order them?

-U.S. Ambassador to El Salvador
Deane Hinton before the American
Chamber of Commerce of El Salvador,
October 29, 1982.

During the six months of this certification period, human rights organizations in El Salvador* have continued to document and report on the violations of the right to life and the right to physical integrity committed by Salvadoran government forces and paramilitary squads against the civilian population. These violations - murder, torture, kidnapping, and disappearance - continue to occur at high levels. In our estimation, the Salvadoran government's abuses of the rights of its citizens form a pattern of gross and consistent violations of human rights.

Human rights organizations in El Salvador operate under conditions of extreme duress. Their offices have been sacked by government troops, their staff members threatened and, not infrequently, abducted and murdered. Nevertheless, human rights groups continue to produce statistics that reflect certain aspects of political violence in El Salvador.

In May, 1982, the Salvadoran Archdiocese revived its Justice and Peace Commission and within it, created the Archdiocesan Office of Tutela Legal (Legal Protection). The restructuring

*These include: the Office of Legal Protection of the Archdiocese (Tutela Legal); Christian Legal Aid (Socorro Juridico Cristiano); the Human Rights Commission of El Salvador (Comision de Derechos Humanos de El Salvador). Another group, the Catholic University Center for Documentation and Information (CUDI) publishes information on human rights in its weekly bulletin Proceso.

reflected concerns by acting Archbishop Arturo Rivera y Damas and other members of the clergy that the existing human rights organization under the auspices of the Archdiocese - Socorro Juridico (Legal Aid) - reported on political violence emanating from only one side of the Salvadoran conflict - that of the government. Hence, Tutela Legal was created to monitor violence from all sources, whether it be government troops, paramilitary squads, or the insurgent forces of the Farabundo Marti National Liberation Front (FMLN).

When Tutela Legal was founded, Archbishop Rivera y Damas made it clear that he "by no means disavowed" the work of Socorro Juridico. In an interview in the official church paper Orientacion he stated, "I have a very good relationship with [Socorro Juridico]. It is simply that after two years of being here I feel that there can be a body that functions better... I have always said that their data were not lies. What they were, they were unilateral, because they only focused on one side of the problem."* In May 1982, Socorro Juridico changed its name to Socorro Juridico Cristiano, and continued to function as an independent human rights organization located on the grounds of the Jesuit high school (Externado San Jose).

*Orientacion, San Salvador, June 6, 1982

Tutela Legal reports on political violence using four different categories:

- 1) deaths of the civilian population attributed to the army, security forces, and paramilitary groups;
- 2) deaths of the civilian population due to military operations;
- 3) deaths of the civilian population attributed to the guerrillas;
- 4) deaths of members of the military acknowledged by the armed forces.

Since mid-year 1982, Socorro Jurídico and the Human Rights Commission have also reported their figures using these categories.

"Playing the numbers game" to assess improvements or deteriorations of the human rights situation is inherently flawed, for reasons that are discussed later in this section. Nevertheless, because the statistics gathered by human rights organizations that adhere to strict standards of verification provide some of the only evidence from which one can make such a deduction, it is important to examine what the numbers do, in fact, illustrate.

Deaths of the Civilian PopulationCivilian Deaths Imputed to the Security Forces,
Paramilitary Squads, and the Army, 1982

	<u>Tutela Legal</u>	<u>Socorro Juridico</u>	<u>Human Rights Commission</u>
January	466*	466	631
February	532*	532	405
March	526*	526	905
April	805*	805	235
May	375	375	868
June	355	355	443
July	201	199	125
August	508	701	457
September	209	474	143
October	561	617	480
November	489	621	341
December	<u>372</u>	<u>296</u>	<u>520</u>
TOTAL	5,399	5,967	5,553

Source: Oficina de Tutela Legal de Arzobispado, "Informe Anual, Año 1982," and Socorro Juridico Cristiano, "Victimas de la Violencia Política en El Salvador," enero-diciembre de 1982

According to Tutela Legal, civilian deaths imputed to government forces and right-wing paramilitary groups dropped slightly in the last six months of 1982, from an average

*Tutela Legal was established in May. The figures for the prior months were taken from those compiled by Socorro Juridico.

of 512 recorded civilian deaths per month in the first half of the year to an average of 386 per month in the second half. Socorro Juridico's figures show however, a surge in repression against the civilian population between August and November, with 701 killings in August, 474 in September, 617 in October, and 621 in November. This contrasts sharply with the end of the last presidential certification period, when deaths had dropped to 375 in May, 355 in June, and 199 in July.*

The intensification of the repression was condemned on almost a weekly basis by Archbishop Rivera y Damas during his homilies in San Salvador's Metropolitan Cathedral. On August 15, 1982 he lamented, "the sadism with which these murders are carried out;" one week later he observed that "the political repression is growing both quantitatively and qualitatively... the majority of these deaths are imputed to the security forces and paramilitary bands."

The figures from Tutela Legal for civilian deaths imputed to the military and paramilitary groups are slightly lower than Socorro Juridico's but show the same monthly pattern: a sharp upswing in killing in August, followed by further dramatic

*Socorro Juridico Cristiano, "Victimas de la Violencia Politica en El Salvador," enero a diciembre de 1982.

increases in October and November. Tutela Legal's documentation also demonstrated the continuing incidence of savagery connected with murders of civilians. In November 1982, for example, 40 out of the 406 persons whose cause of death could be identified had been beaten to death, decapitated, hung, or had their throats slit.

This represents a continuation of the pattern discerned by the Catholic University's Center for Information and Documentation: 10% of the government's and paramilitary's victims from March-June 1982 had been tortured or decapitated.*

The overall figures by Tutela Legal and Socorro Juridico for the year 1982 - 5,399 and 5,967 - civilian deaths caused by the army, security forces, and paramilitary groups respectively - do not lend themselves to the conclusion that repression in the past six months of 1982 has declined relative to the first half of the year. If anything characterizes the year as a whole it is the pattern of increases and abatements in the killing: rises during the middle of a certification period and sharp drop-offs as certification approaches. Tutela Legal's figures, for example, show a yearly high of 805 deaths in the month of April, down to 201 deaths in July; a rise to 561 deaths in October and a drop to 372 in December. Taken as a whole, 1982 witnessed a sustained high

*Centro Universitario de Documentacion e Informacion,
 "La Violacion de los Derechos Humanos en El Salvador,"
Estudios Centroamericanos, mayo-junio 1982, p. 549.

level of murders of the civilian population by official government forces and paramilitary groups - an average of about 500 a month. The continued incidence of these high levels does not warrant the conclusion that human rights are being respected in El Salvador or that this year in any way represents an improvement over last year. The murder of 500 people a month by groups formally or informally connected to the government cannot be seen as acceptable by any standards.

While the overall totals for civilian deaths in 1982 represent a decline over 1981 and 1980, this, too must be read with caution. What the figures show is a decline in verifiable deaths, given the strict standards of reporting and verification upheld by Tutela Legal and Socorro Juridico. As human rights workers in all of El Salvador's human rights organizations stressed, the focus of killing in El Salvador, during this period of intensified armed conflict between government forces and armed insurgents of the left, has shifted to the countryside. Representatives of human rights organizations are rarely, if ever, able to travel to outlying provinces to verify reports of deaths or gather information, given the extreme risk involved in such an investigation. Nor, in addition, are witnesses to or survivors of murder committed by government forces or paramilitary groups able to travel to San Salvador, where human rights offices are located, to present a denuncia. A result is thus, an under-reporting of civilian deaths (recognized by the

U.S. Embassy as well) due to the difficulties of transit.

A notable exception was the massacre of hundreds of unarmed villagers in August 1982 during a military campaign in San Vicente province. Three women survivors presented testimony to the Human Rights Commission in which they stated that 300 unarmed civilians had been killed by government troops. The charge was backed up by a civil defense commander in Santa Clara, five miles south of the site of the massacre. The civil defense commander put the figure at 400.*

A report by the Armed Forces Press Committee (CORPREFA) admitted that an operation had been held in San Vicente, but that "250 FMLN guerrillas were killed" and "the facts have been manipulated by the subversives and by the human rights commission, who seek to distort them."**

The incident is illustrative of the way civilian deaths are reported or disguised in a period of open warfare. Because three witnesses appeared to denounce the killings, Tutela Legal, Socorro Juridico, and the Human Rights Commission incorporated all or part of the 300 figure into their August total of civilian deaths.

*"Account of Massacre Backed," Washington Post, September 9, 1982.

**U.S. Department of Commerce, Foreign Broadcast Information Service "CORPREFA Denies Massacre of 300 Peasants," September 8, 1982.

More frequently, however, the local press will report only that "x" number of FMLN subversives were killed in confrontations with the Salvadoran military. On occasion, human rights offices will be able to verify that some of the "FMLN subversives" were actually unarmed civilians, and incorporate this number into their monthly statistics. Those who monitor only local press reports, however, will miss entirely that civilians form all or part of what is reported as deaths of FMLN combatants.

It is easier to grasp the significance of the figures on deaths by focussing on a limited time period. Late in November Father Jesus Delgado, replacing Monsenor Rivera y Damas in a Sunday service at the Metropolitan Cathedral, observed the following:

During the last week, 104 Salvadorans have lost their lives as a result of the political violence in this country; three of them were dragged from their homes by men in civilian dress, nine were found decapitated, and 28 were members of the armed forces."

The death squads, he continued,

"appear to have no other intention than to satisfy with blood their thirst for vengeance, and to ruin and dismantle the good intentions of the government to improve the situation of the country and its image abroad."

*EFE, "Extenso Analisis Sobre la Situacion de El Salvador Hace el Padre Jesus Delgado," 22 de noviembre, 1982.

During the week referred to in Father Delgado's homily, the victims included seven members of the ACOPASENFA agrarian cooperative on "La Florida" hacienda, whose tortured, mutilated bodies were found two days after they had been dragged from their homes by members of the armed forces:

On the 20th of November, 1982 at 10:30 p.m., a large contingent of heavily armed, uniformed men arrived at the homes of family members of La Florida hacienda. There were approximately 150 of them. They ordered all of the families to open their door, but the families, seeing that they were uniformed soldiers of the Army, did not. So the soldiers broke down the doors and ordered all the men to come out of their houses ... in this way they abducted, Gregorio Mira, Pedro Pacheco, Lorenzo Gutierrez, Isaias Landaverde, Francisco Vasquez, Jeronimo Alvarenga, and Jesus Alvarenga, hitting them brutally and taking them to a place close to the hacienda. The next day people from nearby told us that the seven kidnapped men had been found murdered ... but the Army had mounted a large operation in the area and wouldn't let people come near to see the corpses...

So on the 22nd of November we were able to identify the bodies. We found they had all been tortured; they had been beaten and had their arms broken and bruises on their faces, and their heads almost dangling; one of them, Lorenzo, had his brains coming out, but all of them had their heads cut off which we supposed was done with a knife. None of them had any bullet wounds.*

*Testimony, Tutela Legal, November 24, 1982.

The Murder of Christian Democrats

In El Salvador political persecution has been aimed not only at the left but at parties of the center, including those currently participating in the government. In May 1982 the Christian Democratic Party (PDC) issued a strongly worded statement accusing the military and security forces, as well as paramilitary civil defense squads, of the killing of nine party leaders, six party activists, and 22 peasant supporters in the month of May alone. According to Tutela Legal, 6 members of the PDC - all peasants - were "violently torn from their houses by agents of the authorities. The corpses were found at El Playon." Six members of a civil defense squad were reportedly arrested in connection with the killings, but later reports suggested that the arrest order had been revoked.**

In July, former Salvadoran President Jose Napoleon Duarte charged that the extreme right was responsible for murdering hundreds of Christian Democratic Party activists as well as mayors. (He did not specify the time period). Duarte accused Roberto D'Aubuisson, Constituent Assembly President, of being "responsible to a large extent for the crimes because he

*El Playon is a notorious body dump located on the outskirts of San Salvador.

**Amnesty International, "Assigning Responsibility for Human Rights Abuses: El Salvador's Military and Security Units," London, September 1982, pp. 1-2.

promoted hate against the Christian Democratic Party during the election campaign, although I do not think he was directly implicated" in the murders.* In September, a PDC communique denounced the murder of 35 Christian Democratic mayors, 9 of whom had been killed in 1982.**

On August 4, 1982, Christian Democratic Party officials quoted military sources that one of the Christian Democratic mayors, Ramiro Ponce, had been killed during an hour-long guerrilla attack on the town of San Lorenzo east of San Salvador.*** This is the only one of these killings we are aware of that is attributable to someone other than the security forces and the paramilitary groups allied with them.

*Quoted in U.S. Department of Commerce, Foreign Broadcast Information Service, "Duarte Blanes D'Aubuisson, Right for PDC Deaths," July 31, 1982.

**Centro Universitario de Documentacion e Informacion, Proceso, No. 81, 13-19 septiembre, 1982

***UPI, "Mayor in El Salvador Slain in Rebel Attack," New York Times, August 5, 1982

Abductions and Disappearances

Abductions and disappearances of Salvadoran citizens by government forces and paramilitary squads continued at alarming levels during the second half of 1982. Tutela Legal reported a total of 451 such abductions between May and December 1982, of which 363, or 80% of the victims simply "disappeared." Another 42 of those captured were consigned to prisons maintained by the Ministry of Justice, and 46 were being held by the army and security forces.

Although the figure of 451 abductions for a seven-month period is a high one, it - like reports of murders attributed to government forces - must be considered a vast underestimation of actual kidnappings. From July to December, 80% of the cases documented by Tutela Legal took place in and around San Salvador. Hence, abductions of civilians in other areas of the country went virtually unreported, for the same reasons elaborated in the previous section on civilian deaths. Nevertheless, the available information allows for certain patterns to emerge.

The circumstances of these kidnappings - as well as the subsequent disappearance of the victim - appear to be designed for their maximum terror effect on the civilian population. According to sworn testimonies gathered by Tutela Legal and Socorro Juridico, the abductions frequently take place in the early hours of the morning by heavily armed men in civilian dress. This allows the government to disavow any knowledge of

the kidnapping or the whereabouts of the victims, even though as Acting Archbishop Rivera y Damas and others have noted, armed civilians are themselves often members of the security forces.

Said the Archbishop in his November 7, 1982 homily:

As everyone knows, these abductions, for more than three years now, have been conducted by heavily armed men in civilian dress. Because the identification of these heavily armed civilians is becoming clear, we ask: if there is a just and proven reason to detain a person, why do the authorities have to shed their uniforms to carry out their mission?

According to figures compiled by Tutela Legal, an average of 418 of abductions between July and December were carried out by agents in civilian dress.

The extent to which armed civilians operate in direct collaboration with the security forces - if they are not members of the security forces themselves - is illustrated by the abduction of two members of the Revolutionary Democratic Front (FDR) in mid-October, 1982. In an interview with Americas Watch at Mariona prison on January 11, 1983, Mauricio Domenech and Carlos Alberto Molina stated that they were captured on different days by armed men in civilian dress, forced into waiting vehicles, immediately blindfolded, and tied by their thumbs behind their backs. They were taken to what they believed was a private house, and transferred some six days later to National Police headquarters. The Armed Forces Press Committee

recognized their capture. According to a U.S. Embassy official, the original abduction, however, was carried out by the Treasury Police.*

Even when kidnappings are carried out by men in uniform, the responsible security force or unit regularly refuses to admit to having the victim. Hence the high number of individuals - an average of 87% for the months of August through October - who disappear following their abduction.

A further example may be illustrative. On November 23, 1982, Tutela Legal received the following testimony:

On October 3, 1982, at 11:30 p.m., I heard outside my house a voice saying, 'Dona Graciela, Dona Graciela, open the door!' thinking it was my son I said, 'no, son, don't bother me,' but then they answered in a violent tone, 'open the door or we'll machinegun the house.' I got up and approached the door but they opened it violently. In this way 2 elements dressed in olive green and one in civilian dress, all heavily armed, entered my house. They went directly to the bed where my son was and took him by the hair... they took him outside and told him with violent voices to 'lie face down, son of a bitch...' I could hear three minutes later the voice of my son crying 'Ai, Ai,' as if they were beating him ... Later my neighbors told me that when my son was abducted there were approximately 5 men in civilian dress around our house, to whom my son apparently was given over. They forced

*Interview, January 10, 1983

him into a white microbus and took him away to an unknown destination...[the next day] I went to the headquarters of the Civil Defense to ask about the abduction of my son ... but I was told 'no, ma'am, last night we didn't leave here at all' and they asked me if I had looked in the jails of the municipality and I told them I had already looked there ... in this way I have gone to the different security forces and barracks where they have all told me they know nothing of my son...

Abductions by Security Forces, Army, and
Paramilitary Squads, May - December 1982

	May	June	July	August	Sept.	Oct.	Nov.	Dec.
Total Abducted in Violent Cir- cumstances for Political Mo- tives	63	64	58	71	48	45	51	51
Disappeared After Abduction	50/79x	53/83x	44/76x	58/82x	44/92x	39/87x	38/74x	37/72x
From San Salva- dor and Environs	58/92x	51/80x	46/79x	55/76x	37/77x	38/84x	46/90x	41/80x
Abducted by Armed Civilians	NA	14/22x	15/26x	26/37x	25/52x	21/47x	26/51x	18/35x

Source: Compiled from the Archdiocesan Office of Tutela Legal, Commission of Justice and Peace,
"Informe Anual, Año 1982," and monthly reports May - December, 1982.

The October 1982 Kidnapping of Opposition Leaders

Between October 8 and October 21, some 17 leaders of labor unions and of the Revolutionary Democratic Front (FDR) were kidnapped by groups of heavily armed men in civilian clothes. Those abducted include:

Luis Antonio Menjivar - businessman and a leader of the FDR's Popular Social Christian Movement (MPSC), a group formed in 1980 by Christian Democrats who had resigned from the party.

Julio Cesar Saravia - a member of the MPSC.

Mauricio Domenech - a businessman and member of the National Executive Committee of the National Revolutionary Movement (MNR), a social democratic party and member of the FDR.

David Elias Guadron - an employee in pharmaceuticals and member of the MNR.

Jorge Herrera - a member of the MNR.

Carlos Alberto Molina - head of the Economics Department at the University of El Salvador and a leader of the FDR's member group the Independent Movement of Professionals and Technicians (MIPTES).

Raul Antonio Castro Palomares - a leader of the United Federation of Salvador Trade Unions (FUSS).

Pedro Ramirez Esquivel - a leader of the Trade Union Federation of Salvadoran Workers (FENASTRAS).

Pablo Ramirez Cornejo - a leader of FENASTRAS.

Hector Fernandez - a leader of FENASTRAS.

Daniel Avalos - a leader of FENASTRAS.

Marta Imelda Dimas - trade union secretary

Berta Alicia Cosme Escoto - a seamstress and trade unionist

Victor Jovel - a school teacher and member of the teacher's union ANDES

Silvestre Ortiz Hernandez - a member of the Sugar Refineries Workers Union (SETRAS)

Julio Roberto Rozales

Alejandro Martinez

In denouncing the abductions during a homily at San Salvador's Metropolitan Cathedral, Father Jesus Delgado said that they "appear to be a well-outlined plan to remove the internal leadership" of the Democratic Revolutionary Front "and in this way weaken all attempts at dialogue between the government and guerrilla forces."*

On October 23 these kidnappings were called "thoroughly regrettable" by U.S. Ambassador Deane Hinton who said that he was "reasonably certain" that the Government of El Salvador was not involved.*** On October 25, the Salvadoran Army disclosed that eight of the seventeen were being held in military jails for "conspiracy against state security and destroying the national economy."**** Those acknowledged to be in prison are Domenech,

*AP, "Salvadoran Priest Puts Total of Missing at 15," New York Times, October 25, 1982

**Richard Meislin, "U.S. Envoy Assails Salvador Seizures," New York Times, October 24, 1982

***UPI story, "Eight Missing Salvador Leftists Are in Military Jails, Army Says," Miami Herald, October 26, 1982

Herrera, Jovel, Menjivar, Molina, Saravia, Guadron, and Cosme Escoto.* At least six remain "disappeared," perhaps dead.

This episode raises many questions:

- 1) why were the eight who subsequently turned up in military jails abducted by men in civilian clothes?
- 2) were those who seized the eight FDR leaders who subsequently appeared attempting to convey the impression that the abductions were the work of a paramilitary group not connected to the security forces?
- 3) is it standard practice for the security forces to carry out abductions in a fashion that permits their chiefs to deny responsibility?
- 4) was Ambassador Hinton informed that the security forces carried out these abductions before stating publicly that he was "reason-

*There remains some confusion about the names originally released by CORPREFA, some of which closely resemble the names of people known to have been arrested. The list cited here is taken from a CORPREFA communique published in El Diario de Hoy on November 9, 1982, when the FDR leaders were accused of "generating chaos" and "seeking dialogue and negotiations as a strategic maneuver." Several other trade unionists in addition to the trade union leaders also were abducted the week of October 15-21, 1982. Four have been released.

ably certain" that the government was not involved?

- 5) if Ambassador Hinton was not informed that the security forces carried out these abductions, why couldn't he get this information before publicly asserting that he was "reasonably certain" of something that turned out to be false?
- 6) did the security forces also kidnap the others who have not reappeared?
- 7) is it reasonable to assume that anyone other than the security forces kidnapped the others?
- 8) what has happened to the others?
- 9) what steps has the U.S. taken to determine the whereabouts of the others?
- 10) does this episode indicate that the "government of El Salvador is making a concerted effort to comply with internationally recognized human rights" as required by U.S. law if certification is to take place?

Some of these questions were addressed to Secretary of State George Shultz in an October 29, 1982 letter from the Americas Watch and the American Civil Liberties Union (see Appendix A).

A response was not received until January 18, 1983, and appears as Appendix G of this report.

It should be noted that this episode bears directly on the central feature of the July 27, 1982 certification. At that time the Reagan Administration pointed first and foremost to the March 1982 elections as a sign that democratic rule was being established in El Salvador. The Americas Watch, the ACLU and other critics of the July certification argued that the elections were less significant because the political opposition reasonably feared to take part. We cited the November 1980 kidnappings and murders of six FDR leaders by the El Salvador security forces. The October, 1982 kidnappings demonstrate that mere identification with the political opposition - let alone campaigning for office - is extremely dangerous. Regrettably, this episode confirms our view that the 1982 elections took place in circumstances that could only have afforded the Salvadoran electorate an extremely limited choice.* Accordingly, the elections do not warrant the significance that the Reagan Administration attached to them in the July certification and cannot be said to indicate that El Salvador is achieving democratic rule.

This episode also illustrates the extent to which the government of El Salvador is not "achieving substantial control

*The State Department response to the ACLU/Americas Watch letter characterizes the FDR/MNR as "a part of the guerrilla terrorist opposition." This is not only highly inappropriate, but helps to create a climate in which this legally-registered party is fearful to take part in the electoral process.

over all elements of its own armed forces" as required by the certification. According to a U.S. Embassy official, the abductions of the FDR leaders were carried out by the Treasury Police, but no one in the High Command of the armed forces had ordered them. Asked whether Colonel Francisco Moran, head of the Treasury Police, would have known about the actions of his troops, the U.S. official responded, "Yes." Later he added, "it's a perfect example of the lack of command and control." He also added that Colonel Moran was not a member of the High Command, which he defined as Minister of Defense Garcia, Army Chief of Staff Col. Flores Lima, and National Guard Chief Vides Casanova.* This "re-definition" of the High Command (usually understood to include the heads of all the security forces) would appear to allow U.S. officials to claim that sensitive cases -such as the kidnappings of the FDR leaders -are not the work of the High Command.

A representative of America Watch interviewed two of the FDR leaders currently being held in Mariona prison. During that interview, Mauricio Domenech and Carlos Alberto Molina stated that:

- their abductors were armed men in civilian dress
- they were forced into waiting vehicles,

*Interview, U.S Embassy Official, January 10, 1983.

- blindfolded, and tied with their thumbs behind their backs
- they were interrogated constantly without sleeping, and later forced to sign confessions they had not read
 - the focus of the questions was to establish that they were members of the FDR-FMLN and responsible for everything happening in El Salvador
 - they had not been informed of the charges against them, knew only what had been printed in local newspapers, and had no access to counsel*

The State Department's response to the Americas Watch/ACLU letter, signed by Craig Johnstone, stated that an Embassy officer had visited the detained FDR leaders in Mariona prison and that "... they appeared in good health and did not indicate that they had been mistreated."

*Interview, January 11, 1983.

Torture

The certification requires that the government of El Salvador make a concerted effort to comply with internationally-recognized human rights. The following examples, while not exhaustive, suggest that torture and murder continue to be routine practice among the Salvadoran military and security forces, and constitute a pattern that should preclude certification.

On July 26, 1983, The Washington Post reported a case of torture that had taken place during the previous month:

The case in point involved a Salvadoran volunteer for the Green Cross, a leading humanitarian agency. The volunteer was arrested on suspicion of providing supplies to guerrillas. In fact, according to the volunteer, he had distributed medicines received through international channels to displaced persons in an open and above-board fashion.

The torture is reported to have taken place over several days in a secret part of the National Police headquarters in downtown San Salvador, in a suite of soundproof rooms inaccessible to the International Red Cross and other groups that visit prisoners.

In one torture session, the victim was strapped to a rotating wheel, similar in function to the medieval rack, causing great muscle strain and pain. In another torture, he was beaten severely and forced to inhale lime.

In a third operation, which the torturers called "the Carter," in an ironic reference to former president Jimmy Carter, a champion of human rights, the victim was strung up by ropes tied to his hands and feet while severe pressure was applied to his testicles by means of a wire.

The State Department was informed that the victim was in great pain and psychological distress when seen by an American official after his release from custody. The official had known the victim before and considered him reliable and credible.

According to official sources, the U.S. Embassy in San Salvador is in possession of several other documented cases of torture involving various government security forces.*

A notable feature of this episode is that the agency that tortured the Salvadoran Green Cross volunteer, and did it in a setting that indicates that torture is a regular practice, was the Salvadoran National Police. The Commander of the Police and, therefore, the person directly responsible for this incident and for the maintenance of physical facilities in which torture may take place, is Col. Reynaldo Lopez Nuila. He is one of the seven persons appointed by President Magana to serve as a member of the governmental human rights commission.

According to The Washington Post, the U.S. Embassy in San Salvador attempted to cover up this episode:

The report was given the very high classification of "Nodis" -not for distribution.

"Only about a dozen people were even supposed to see it," said one American diplomat here

*Don Oberdorfer, "Torture Reported in El Salvador," Washington Post, July 26, 1982

At least one official concerned with the case was looking down the road to the required Reagan Administration certification of an improving human rights situation here

And there was the specific intent, diplomats here said, to preserve the embassy's good relations with the commander of the National Police, Col. Reynaldo Lopez Nuila.*

In fact, this particular case became known only because someone in the Department of State leaked the information to the press.

The following testimony, gathered by Socorro Juridico at "La Esperanza" penitentiary (Mariona) on January 4th, is from Walter Zuleta Osorio, a 24-year-old teacher and member of the National Association of Salvador Educators (ANDES),** captured by the Treasury Police on August 14, 1982:

...From the moment I was abducted, until the moment I was transferred to this prison on October 27th, I was savagely

*Christopher Dickey, "Torture Case Poses Problems For U.S. Officials," Washington Post, August 2, 1982

**The Treasury Police arrested at least 22 professors, including the wife of a Deputy Secretary of Education, during an ANDES meeting on August 14 at the Federal Republic of Germany school. Director of the Treasury Police Colonel Francisco Moran accused the teachers of having ties with the guerrillas and stated that "subversion is reactivating activist cadres in the teachers' sector to organize disorders in order to make the government talk with the extreme left." Many of the teachers remain in detention. (U.S. Department of Commerce, Foreign Broadcast Information Service, "Police Arrest Entire ANDES Board of Directors," August 17, 1982, and Ibid., "Treasury Police Director on Arrested Teachers," August 20, 1982).

tortured for 75 days in a cell of the Treasury Police... Among the tortures they applied I can mention: fist beatings all over my body, especially my head and stomach; kicks over all my body; blows with the tip and butt of a rifle all over my body; they put the "hood" over my head, trying to asphyxiate me, tying my hands behind my back; they tied my feet and put me face down; then two torturers lifted me up and put on the "hood" - it is made of plastic and covered my whole face and head, depriving me of air - and when they saw that I was dying they let up a bit, and then repeated the torture. They also left me hanging for entire nights, tying my hands behind my back and hanging me so that my feet didn't touch the ground... These torture sessions lasted a minimum of two hours and as much as 18 consecutive hours during the 75 days I was held inside the Treasury Police headquarters...*

Several weeks before Zuleta was transferred to Mariona prison, President Alvaro Magana invited members of the Salvadoran Episcopal Conference to a meeting with the High Command. During the meeting, attended by all the bishops, members of the military showed two videotapes of Walter Zuleta denouncing members of the church and church institutions as "involved in subversion." Zuleta accused the Catholic University of being "the true hatchery" of subversion, and its rector, Jesuit Father Ignacio Ellacuria, of "maintaining contact with the maximum

*Testimony, Socorro Jurídico, January 4, 1983

leader of subversion in El Salvador," and of including "Marxist concepts in the entire teaching program" of the university. Zuleta described a publication of the Catholic University, Estudios Centroamericanos (ECA) as "gathering and giving slogans" to subversive movements in the country.*

Monsenor Rivera y Damas responded to the episode in his October 10, 1982 homily at the Metropolitan Cathedral. He defended the individuals, institutions, and publications mentioned in Zuleta's statement and concluded that one "had to doubt the extra-judicial confession of a prisoner being held incommunicado in the jails of one of the security forces."

The incident is revealing not only because it involves the brutal torture of an individual by the Salvadoran security forces, but also because it implicates the Salvadoran High Command in a direct attack against the Church and Catholic institutions. The history of religious repression has been well documented. (See for example, Americas Watch and ACLU, Report on Human Rights in El Salvador, op. cit., Chapter 7). The continuing involvement of the country's top military leaders in such a campaign can only raise fears for the lives and safety of persons connected with the church.

*Centro Universitario de Documentacion e Informacion, Proceso, No. 85, 11-17 octubre, 1982, p. 7.

Repression Against Human Rights Monitors

Over the last three years organizations and individuals in El Salvador which monitor human rights violations and publish information on their occurrence have come under severe attack. The offices of these organizations have been bombed and searched by government security forces, and their personnel threatened, murdered, and made to disappear. A brief summary of some of these incidents follows:*

July 1980 - the offices of Socorro Juridico, located in a Jesuit-run high school are searched and ransacked. According to the OAS Inter-American Commission on Human Rights Annual Report 1980-81, "the operation was carried out by combined forces of the Army and National Police."

September 1980 - the offices of the Human Rights Commission, then located on Avenida Espana, are bombed for the second time in six months.

October 1980 - Maria Magdalena Henriquez, press secretary of the Human Rights Commission, and Ramon Valladares, a Commission administrator, are abducted and murdered. The Commission attributes responsibility to the National Police.

*The information for this summary comes from Americas Watch and the American Civil Liberties Union, Report on Human Rights in El Salvador, op. cit., pp. 71-72; Comision de Derechos Humanos de El Salvador, monthly bulletin, Nov. 15, 1982; Heather Foote, "Documentation on the Human Rights Situation in El Salvador: the Archdiocese legal Aid Office," Washington Office on Latin America, April 27, 1982; and Amnesty International, letter to U.S. Secretary of State Alexander Haig, May 11, 1981.

December 1980 - According to Amnesty International, Socorro Juridico is forced to close temporarily because the National Police raided its offices 17 times in one week.

March 1981 - The Salvadoran Armed forces issue a "hit list" of 138 "traitors" who will be "relentlessly pursued." The list includes the names of two lawyers from Socorro Juridico, and several members of the Human Rights Commission.

December 1981 - Human Rights Commission member Carlos Eduardo Vides, along with two employees of the Salvadoran Archdiocese are detained at an army roadblock between San Salvador and San Vicente. Their whereabouts are still unknown.

During this presidential certification period, the pattern of repression against individuals working for human rights organizations has continued. We discuss below three of the most notable cases.

Patricia Cuellar Sandoval

On July 28, 1982, Patricia Cuellar, a former secretary for Socorro Juridico and a U.S. citizen, disappeared. According to a writ of habeas corpus presented to the Salvadoran Supreme Court by her former husband:

In the early morning of July 28th, Ms. Cuellar was at her home in Colonia Roma, Roma Apartments Number 81, an area very well guarded by the Armed Forces. That day, July 28th, she took her three daughters to their school at 11:00 a.m. At 11:00 p.m. that same day, persons in olive green uniform driving a blue pick-up and green jeep arrived at the

apartment of Patricia and, without forcing the door, entered the house, searched it, and took away furniture and belongings. To remove these items they had to make three trips and on no occasion were they stopped at the check point operated by security forces near the Roma apartments.

According to testimony presented to Tutela Legal on July 31, 1982, Patricia had been followed by two men in civilian dress on the day prior to her capture. Patricia's father Mauricio Cuellar, a prominent member of the Association of Salvadoran Industrialists (ASI) was also abducted from his home on July 28th, along with a domestic servant.*

Because Cuellar is a U.S. citizen, the U.S. Embassy, and in particular FBI special agents, have pursued an investigation of the case. Embassy representatives have interviewed and polygraphed at least one witness who said she was in her apartment the night that uniformed, armed men arrived at Cuellar's home. A U.S. Embassy official has said that "we have had no success at getting hard evidence," but that National Police investigative units have been perfectly cooperative with us when we give them a specific lead.*** According to U.S.

*Tutela Legal, Informe Semanal, July 30-August 3 and August 9-12, 1982

**Interview, U.S. Embassy Official, January 9, 1983

Ambassador Deane Hinton, "the case is still being treated as a disappearance."*

Evidence gathered by Socorro Juridico, where Patricia Cuellar used to work would appear to implicate the Salvadoran military in Patricia and Mauricio Cuellar's disappearance. Information provided to Socorro Juridico alleges the following:

- In April 1981 approximately 8 uniformed soldiers arrived at Patricia's home at 11:00 p.m. (during curfew hours). One of the soldiers told family members present in the home that they were looking for Patricia because she was an "international communist" and "dangerous subversive." Patricia was not home at the time. The soldiers then asked those present if they knew where Patricia's relatives lived. One family member present stated that he knew only where Patricia's father lived. The soldiers obliged this family member to accompany them to Patricia's father's house.

*Letter from Hinton to the Lawyer's Committee for International Human Rights, September 20, 1982

- the soldiers and family member arrived at Mauricio Cuellar's home where the soldiers asked him about the whereabouts of his daughter. She was not there. The soldiers then went to the home of Patricia's uncle, but did not enter the house.
- the soldiers returned to drop off the family member they had taken with them, passing first by the San Carlos military barracks of the First Infantry Brigade of the Salvadoran Army. They dropped off two of the soldiers at the barracks, along with a captured youth the soldiers had with them in their vehicle.

The above information, if true, would appear to indicate that for more than a year before her abduction, Patricia Cuellar was being pursued by elements of the Salvadoran military. According to the U.S. Embassy, however, "... all of the Salvadoran Military and Security Forces report that they do not have the Cuellars under detention.**

*Hinton letter to the Lawyers Committee, op. cit., p. 1

America Fernanda Perdomo

America Fernanda Perdomo, in charge of public relations for the Human Rights Commission of El Salvador, was abducted on August 20, 1982 from a suburban home near the capital. Kidnapped with her were Saul Villalva, a member of the Executive Committee of the Revolutionary Democratic Front (FDR); Maria Adela Cornejo de Recinos, wife of imprisoned labor leader Hector Bernabe Recinos, and the Recinos' 13-year-old daughter Ana Yanira. According to testimony presented to the Human Rights Commission and Tutela Legal on August 24 and 25, respectively, the violent abduction was carried out by agents of the Treasury Police.* All four victims are still unaccounted for.

Pedro Posada

Pedro Posada worked with Socorro Juridico before undertaking a three-month assignment with the Social Secretariat of the Archdiocese to work on refugee matters. On December 9, 1982, he disappeared when returning from Tejutla, Chalatenango, where he was retrieving identity papers for refugees in Archdiocesan camps in San Salvador. Both Posada and the vehicle in which he was driving have disappeared.**

*Comision de Derechos Humanos de El Salvador, denuncia recibida el 24 de agosto de 1982; Tutela Legal, "Informe," 20 al 26 de agosto de 1982.

**Testimony received by Socorro Juridico on December 11, 1982; paid advertisement placed by Posada's wife, Diana Margarita Chavarria Segovia, in local newspapers, December 22, 1982.

While involvement in human rights work in El Salvador, given the attitude of the Salvadoran military, is intrinsically risky, the situation has not been helped by statements from U.S. officials imputing political motives to offices and individuals engaged in human rights monitoring.

In an interview with The Washington Times of December 30, 1982, U.S. Ambassador Deane Hinton stated that:

We credit the people involved in that work. They are dedicated, committed, and, I would add, myopic. They have an evident political bias.

[Question: In favor of the left?]

Sure. But they're courageous to continue and they say things from time to time, that have some truth. Too bad they're biased.

Later, in an obvious reference to Socorro Juridico, Hinton added that:

They took advantage of the Archbishop. They forced their false numbers off on him. They spoke in his name. And he, through time, managed to move them out and form a new group, which is more interested in human rights and less interested in politics. I think that group also has a leftist bias; but it's not as bad as the other human rights groups.*

*Roger Reed, "Right Kind of Talk Hinton Goal in Salvador," The Washington Times, December 30, 1982

Aside from the inaccuracies and inherent slurs in Hinton's statement, one would hope that such statements from senior U.S. diplomats would cease, given that they only serve to jeopardize further the work of admittedly "dedicated, committed" human rights workers.

Repression Against The Church

Closely related to repression against human rights monitors is repression against the Catholic Church, which has been the principal defender, promoter, and protector of human rights in El Salvador. In the past three years this persecution has meant the murder of an Archbishop, the killing of scores of priests, nuns, catechists, and "delegates of the word," as well as the murder of four U.S. churchwomen. According to a Salvadoran priest, persecution of the Church has been so severe that the Archdiocese has today 35% fewer clergy than it did in 1977.*

During the last six months, acts of violence against the church have continued unabated, taking on new intensity in August and September.

- In late August and early September, an editorial in a Salvadoran newspaper accused Monsenor Rivera y Damas of insisting on "negotiation" and of defending the human rights of only the "subversives." The article accused Rivera of being a "simple imitator of [murdered Archbishop Oscar] Romero, who...had also become an agitator from his pulpit."**
- In early September spokesmen for the Archdiocese of San Salvador stated that "no less than four armed men" attempted to enter the offices of the Catholic radio station YSAX. The gunmen forced a watchman to give them the names of employees and the director of the station.***

*Interview, January 11, 1983.

**Centro de Documentacion e Informacion, Proceso, No. 80, 6 al 12 septiembre 1982, p. 5

***Ibid.

- On September 15 the grass-roots Christian communities of San Salvador issued a statement mourning the death of catechist Jose Alfonso Acevedo, abducted from his home and murdered by uniformed men on September 12. In their statement the Christian communities observed that "...Lately, there seems to be an increase in the persecution against the Church, and specifically against its pastoral workers. In other areas, three pastoral workers have disappeared, all members of Christian communities. Two others have managed to escape by not being at home just when persons came looking for them. Two other young members of the Communities are in detention.**
- In mid-September two bombs were placed by unidentified individuals in the agricultural science buildings of the Catholic University. The bombs were removed before exploding.**

In late September and early October authorities twice searched the Santa Lucia parish and gunmen searched and machinegunned a church in Mejicanos, taking photographs and posters of Archbishop Romero that were deemed "subversive."***

*Washington Office on Latin America, "The Catholic Church in El Salvador Speaks Out," September, 1982.

**U.S. Department of Commerce, Foreign Broadcast Information Service, "Bombs Found at Central American University," September 13, 1982.

***Centro Universitario de Documentacion e Informacion, Proceso, No. 83, 27 septiembre al 3 octubre, 1982, p. 4.

The Status of Political Prisoners

As of January-1983 there were between 600 and 800 acknowledged political prisoners being held under the auspices of the Salvadoran Ministry of Justice. Most of these prisoners were in the "La Esperanza" (Mariona) penitentiary and the women's prison at Ilopango, both outside of San Salvador. U.S. Embassy officials admitted that they had "no idea" how many other prisoners were being held in military barracks and detention centers throughout the country, and called the lack of information "a genuine problem.**

Most of the 499 prisoners currently in Mariona were tortured - by beatings, electric shock, hanging by the wrists, simulated suffocations, etc. - between the time of their capture and the time they were remanded to the prison.** Not one has had access to defense counsel since the passage of Decree 507, a draconian state of siege law passed in 1980 that suspends most constitutional guarantees. Under Decree 507, prisoners are supposed to be brought before a military judge within 180 days of their capture. This is a practice observed in the breach. Over half of the prisoners in Mariona were remanded between 1978 and 1981. Not one has been brought to trial.***

*Interviews, January 9 and 10, 1983.

**Tutela Legal, "Penal 'La Esperanza,' Lista de Presos Politicos" octubre de 1982.

***Interview, Tutela Legal, January 10, 1983

Political Violence Attributed to the Guerrillas

In international law, human rights violations refer primarily to deprivations of life and liberty without due process of law by government forces or their agents. In addition, the Americas Watch considers that violations of human rights by insurgents who control population and/or territory are appropriate matters for international concern. The Americas Watch and the ACLU condemn all acts of violence in El Salvador - murder, kidnappings and the destruction of property - including those matters essentially viewed as crimes under Salvadoran law punishable through the domestic legal system.

Because the methodology of Salvadoran human rights organizations now includes categories of political violence attributable to the insurgents - deaths of civilians and deaths of members of the armed forces - we publish the figures compiled by Tutela Legal.

	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Deaths of the civilian population attributed to the FMLN.	6	14	0	0	5	4	3	8
Deaths of members of the armed forces reported by the military.	25	74	107	88	38	115	110	104

Source: Oficina de Tutela Legal del Arzobispado, monthly reports May-December 1982.

As the table shows, recorded deaths of civilians imputed to the guerrillas total 40 for the May-December period.* During that period, the armed forces reported that 661 of its troops were killed. During this certification period, the deaths of 20 civilians were attributed to the guerrillas by Tutela Legal and the armed forces said that 562 of their troops had been killed by the guerrillas.

In urging Tutela Legal to report on political violence from all sources, the Archbishop apparently did not endorse the view that all violence should be viewed in the same way. As he said in a January 2, 1983 homily:

To a certain degree repressive violence against defenseless people by persons invested with authority is more condemnable, for they have been established to protect human rights.

*To their credit, the guerrillas appear to have adopted the procedure, not usually practiced by the Salvadoran armed forces, of taking prisoners of war. According to the International Committee of the Red Cross (ICRC), the FMLN turned over at least 212 prisoners to the Red Cross between August and November 1982. International Committee of the Red Cross, monthly reports, Geneva, August - December 1982.

The Salvadoran government-sponsored Human Rights Commission
Formation

On August 3, 1982, President Alvaro Magana and four of the five political parties which had participated in El Salvador's March 28th elections signed a document known as the Pact of Apaneca, establishing the government's basic platform. The Pact set out seven objectives of the "government of national unity": pacification, democratization, human rights, economic recovery, consolidation and guarantee of reforms, attainment of trust and security, and strengthening international relations.

The Pact established three national commissions: Political, Human Rights, and Peace. According to President Magana, the Human Rights Commission would "protect, watch over and promote human rights, particularly those recognized by the political constitution and international conventions, and ... will comprise institutions, groups, and people to be appointed by executive decree."*

On December 2, 1982, President Magana presided at a ceremony to inaugurate the Human Rights Commission, whose members he had chosen in consultation with the parties signatory to the Apaneca

*Executive Decree No. 121 signed by President Alvaro Magana, August 31, 1982; quoted in U.S. Department of Commerce, Foreign Broadcast Information Service, "Executive Decree Implements Apaneca Pact," September 1, 1982.

Pact. The Commission did "not constitute a mere propaganda action, designed to win points in foreign public opinion and before foreign governments," he stated, because "... the government that does not respect human rights ... contradicts its own reason for being, creates a negative international image and runs the permanent risk of being destabilized."* Conspicuously absent from the ceremony, well attended by foreign diplomats and top Salvadoran officials, was Assembly President Roberto D'Aubuisson.**

The seven persons selected by Magana to serve on the Commission include:

- Colonel Reynaldo Lopez Nuila, the Commission's only governmental representative and the head of the National Police;
- Monsenor Freddy Delgado (the coordinator of the Commission), a defender of the current government of El Salvador within the Catholic hierarchy and sharp critic of Socorro Juridico;
- Manuel Lainez Mendez, lawyer;

*Richard J. Meislin, "Salvador Names 7 to a Rights Panel", New York Times, December 3, 1982.

**Ibid.

- Mario Luis Velasco - a banker, lawyer, and close friend of Magana's;
- Jorge Ernesto Campos - a construction engineer and Under Secretary of Planning until his resignation in early 1981;
- Cristobal Aleman Alas - a peasant leader and member of the Salvadoran Communal Union (UCS);
- Flor de Maria Villacorta de Asbun - a friend of Magana's and lawyer for the Banco Hipotecario.

The executive secretary of the Commission (and the one responsible for its day-to-day operations) is Benjamin Cestoni, a lawyer and government prosecutor employed by the Fiscalia General de la Republica (the equivalent of the Attorney General's office).

The Functioning of the Commission

According to Monsenor Delgado and Dr. Cestoni, the Commission is in an "organizational stage." Its first formal meeting was held January 3, 1983; Cestoni was sworn in as executive secretary on December 27, 1982. The Commission's budget for 1983 had still not been approved as of January 10, 1983. The Commission expects to employ four law students and

four secretaries to assist in receiving testimonies and processing cases. As of January 10, Cestoni had one secretary, and office furniture that was either his own or borrowed from the Fiscalia, where the Commission's office is located. Though the Commission has not yet undertaken significant activity, Cestoni impressed an Americas Watch representative as genuinely committed to protecting human rights.

Between December 3, 1982 and January 10, 1983, the Commission had received 38 denuncias from persons whose relatives had been arrested or had disappeared. Seven cases were resolved; i.e., the victims either located or released. One involved Daniel Ceron Ortega, located in a cell in the National Police headquarters. Another involved the release of Cristina Alcaine Herrera, kidnapped along with her older sister Beatriz on January 5, 1983 by the Treasury Police. Members of Cestoni's office receive the denuncia, and then pass it to one of the members of the Commission for action.

A widely-publicized case in which the Commission intervened involved the December 5, 1982 abduction by the guerrillas of 132 youths from a soccer game in San Sebastian, San Vicente province. Three members of the Commission (Delgado, Lopez Nuila, and Aleman Alas) went to San Sebastian "to verify an act denounced in the press, relating to the mass kidnapping and assassination carried out by terrorist forces of the FMLN."*

*Human Rights Commission communique, December 17, 1982, signed by Mons. Delgado.

According to the Commission:

"On December 5 at about 3:00 p.m. approximately 50 armed and uniformed terrorist elements suddenly interrupted a soccer game, obliging players and spectators to throw themselves on the ground. Then they selected 132 children and youths of both sexes between the ages of 12 and 20, as well as some adults, and forced them at gun-point to accompany them to their camp ... Idlefonso Jovel Rivas disobeyed the orders and tried to escape ... and was murdered in the presence of all the players and spectators ..."

Several days later, in an act apparently unrelated to the communique released by the Human Rights Commission, the guerrillas released all but two of the captives, who had elected to join the guerrilla forces.

The Commission's involvement in the San Sebastian case may be indicative of several aspects of its work. According to U.S. Ambassador Deane Hinton, "they [the Commission] have already demonstrated that they are going to be more balanced than the so-called existing Human Rights Commission, because it will examine human rights violations from the left, as well as other places."* According to Delgado, the government Commission "is not looking for publicity" for its work through the publication of statistics, testimony, etc. This contrasts with his assertion

*Interview, The Washington Times, op. cit., December 30, 1982

that "we were effective [in the San Sebastian case] in obtaining the release of all but 2 of the prisoners, and in publicizing the case internationally." (Delgado is, not coincidentally, head of the "promotion and public relations" section of the Commission).

According to Benjamin Cestoni, the Commission was "created politically" (i.e., by the President as part of a political national unity Pact) but "is at the service of anyone." In at least one episode, however, Mons. Delgado asked a woman whose husband had disappeared "why have you come to us, when you have your own human rights organizations?" The case involved an Archdiocesan worker and former employee of Socorro Juridico, Pedro Posada, who disappeared in mid-December 1982. (See Section on "Repression Against Human Rights Monitors") Delgado also told Posada's wife that she had to present written testimony to the Commission. The statement was eventually drafted by Socorro Juridico.*

Furthermore, when asked what differences there were between the work of the government Commission and that of offices such as Tutela Legal, Delgado responded, "Tutela Legal attempts to help people of few economic resources. Our work is much broader."

Though we support the formation of a government - sponsored human rights commission, and hope that the honest,

*Interview, Socorro Juridico, January 10, 1983.

dedicated people within it are able to fulfill their mandate to promote and protect human rights in El Salvador, we raise the following concerns regarding its functioning:

- because the Commission's offices are located in a government building (the Fiscalia), the premises are guarded by armed, uniformed members of the National Police. On one occasion, a representative of Americas Watch arrived at the Fiscalia at approximately 3:00 p.m. on a weekday at the instruction of Mons. Delgado, but was informed by the police guards that the human rights office was closed. A subsequent telephone call to Mons. Delgado ascertained that this was simply not true.

One might also question the appropriateness of stationing armed, uniformed National Policemen outside a human rights office, when citizens who arrive to seek help may have justified reason to fear the security forces.

- it seems somewhat ironic that the sole government representative on the

Commission is the director of the National Police, a security force described in previous sections of this report as responsible for numerous cases of torture, abduction and murder. (During the month of December 1982 alone, Tutela Legal assigned responsibility to the National Police for 18 kidnappings, most of whose victims are still counted as "disappeared"). Lopez Nuila himself, moreover, in an interview with Washington Post reporter Joanne Omang in April 1982 personally defended his forces' arrest technique of sending non-uniformed agents on midnight raids, without stating the charges or identifying themselves as police, as necessary to surprise subversives.**

*Tutela Legal "Personas Capturadas por Motivas Politicos Imputados a la Policia Nacional Cuyas Denuncias Se Recibieron Durante el mes de Diciembre"

**Interview, Joanne Omang, January 4, 1983

Gathering the Statistics

While Americas Watch June 1982 report U.S. Reporting on Human Rights in El Salvador: Methodology At Odds With Knowledge dealt extensively with the methodology used by different human rights groups to gather their information, it is useful to review briefly the process of gathering statistics.

Tutela Legal, with offices in the archdiocese, relies for its data on non-combatant deaths principally on personal sworn testimony or denuncias (denunciations) made by relatives of the victim and/or close associates, neighbors and eyewitnesses to the act of violence. Press reports (such as when the Armed Forces Press Committee - CORPREFA - announces that it killed "50 guerrillas in combat") do not form part of Tutela Legal's statistics unless personal witnesses appear to corroborate the press accounts.

In the case of civilian deaths attributed to armed guerrillas, Tutela Legal relies once again on direct testimony, supplemented by reports in the local press. Deaths of members of the military are gathered from the official statistics announced by CORPREFA. Because of the lack of reliable information, Tutela Legal does not report deaths of combatants of the armed left opposition.

The methodology used by Socorro Juridico Cristiano in compiling data on violence against the non-combatant population is identical to that of Tutela and, in fact, served as the model

for Tutela Legal when that office began operations in May 1982. In a November 5, 1982 cable from the U.S. Embassy in San Salvador to the State Department, Ambassador Deane Hinton asserted that Socorro Juridico Cristiano's "figures on deaths are taken from newspapers, from Radio Venceremos, from denunciations by family members, and from other human rights organizations. The figures may be subject to inflation through duplication of reporting by other sources."

This statement is simply false. Socorro Juridico Cristiano, as it has done for years, relies principally on direct sworn testimony presented to its office. According to a background paper prepared by Socorro Juridico, press reports are considered "complementary information" which "must be submitted to verification because they do not meet the requirements that Socorro Juridico has established." Furthermore, "Socorro Juridico does not accept as reliable the human rights information provided by the governmental, commercial, or insurgent communications media (CORPREFA, national newspapers, insurgent radios)... Without confirming this information, Socorro Juridico does not include it in its communiques."

The Human Rights Commission of El Salvador, also located on

*Socorro Juridico Cristiano, "Metodologia - Recopilacion de Datos," pp. 3, 4 and 9 and interviews with office staff, January 1983

the grounds of the Archdiocese, gathers its figures similarly from personal declarations by relatives and witnesses to violence against the civilian population. To a greater degree than the other two groups, the Commission integrates national and international press accounts and personal observation, as well as official Salvadoran government communiques into its reports.

Over the past year and a half, representatives of Americas Watch have visited El Salvador on several occasions, and have visited human rights offices there each time. Thus we can attest to the fact that these offices are constantly visited by people who arrive to give testimony, most of them from poorer sectors of the population.

The Documentation Center of the Catholic University (UCA), as a previous Americas Watch study noted, is "not a human rights group but a clearinghouse ... the documentation center publishes reports on murders and other incidents from all sources, including organizations, the military, FMLN communiques, the Church, and so on.**

The official Salvadoran government Human Rights Commission, which was sworn in on December 2, 1982, has not yet published statistics on the cases referred to it. Nor, according to its coordinator Monsenor Freddy Delgado, does it intend to make

*U.S. Reporting on Human Rights in El Salvador: Methodology At Odds With Knowledge, p. 25

public dissemination of information about human rights violations a central feature of its work. Like other human rights organisations, the governmental Commission receives personal declarations from relatives or acquaintances of the aggrieved parties, as well as other eyewitnesses and press reports.*

The U.S. Embassy in San Salvador gathers its data from the pro-government local press, a curious source given the admission by an Embassy official that the Salvadoran press is "inherently biased, not accurate, and not competent by U.S. standards."**

According to Ambassador Hinton in a November 5, 1982 cable to Washington:

...the primary source for newspaper reporting of civilian deaths are the justices of the peace located in municipalities throughout the country... To the extent that reporters check with the courts, the figures are an accurate reflection of reported deaths. Not all deaths are reported, and not all areas are covered by justices or reporters...

*According to Monsenor Delgado, for example, the Commission's investigation of the abduction of 132 persons from a soccer game in San Vicente province in December 1982 by members of leftist armed groups was prompted by a front page story in a local newspaper.

**Interview, January 9, 1983

Part II - Control Over The Security Forces

Disciplining of Members of the Salvadoran Armed Forces for Human Rights Violations

According to the July 27 certification, in the period following the January 28 certification, 109 members of the Salvadoran armed forces and "at least 20" civil defense members were disciplined and/or remanded to the civilian courts. This was the most important evidence cited to indicate that the government of El Salvador was complying with the provision of the law requiring that it "is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces." Accordingly, the inference was that the 109 and "at least 20" cases reflect this achievement of control over torture and murder.

On August 4, 1982, the Americas Watch asked the Department of State for detailed information on these cases.* On September 27, the Department of State declined to provide this information on the ground that it had "been provided to us on a very confidential and privileged basis by the Salvadoran government."**

*Letter from Aryeh Neier (See Appendix B)

**Letter from Elliott Abrams (See Appendix C)

On November 30, the U.S. Department of State responded to an inquiry about these cases from Representative Clement Zablocki, Chairman of the House Foreign Affairs Committee. That response makes it clear that, far from having obtained detailed information on these cases "on a very confidential and privileged basis" as the State Department asserted in its letter to the Americas Watch two months earlier, the State Department had not obtained this information at all. The only details the State Department could supply to Chairman Zablocki were that, "A follow up inquiry revealed that 44 cases are either under investigation or have been submitted to the courts. The remaining cases were either crimes against other military members or were minor offenses handled administratively."* Subsequently, on December 2, the State Department responded to an inquiry from Representative Don Bonker and informed him that some 56 of these 109 cases had been submitted for judicial action and only some 44 involved human rights related cases. According to the Department of State, "no one of the 44 individuals involved in human

*United States Department of State answers to questions from Hon. Clement J. Zablocki with covering letter from Powell A. Moore, November 30, 1982 (See Appendix D)

rights-related cases has yet been convicted.** Again, the State Department indicated that it did not have additional information on the cases, such as the charges against those referred for prosecution. According to the Department of State's letter, it is difficult to obtain information on the individual cases because there are 60 distinct circuit courts in the country, and the Armed Forces General Staff in San Salvador does not keep central files.** The State Department letter went on to assert that, "Nevertheless, the Embassy is now attempting to obtain additional information on each of the cases involving persons accused of human rights violations, including the specific charges involved.***"

In January, 1983, the Department of State released a document to the ACLU that had been requested five months earlier under the Freedom of Information Act. Though passages from this document were deleted by the Department of State, it makes clear why the Department was unable to provide the information that had been requested by the Americas Watch and Representatives Zablocki and Bonker.

*Letter from Elliott Abrams (See Appendix E)

**Ibid.

***Ibid.

This document* is a cable from Ambassador Deane Hinton in San Salvador to the Department of State, dated July, 1982, that provides the information on the "number, type and status of disciplinary actions initiated against members of the armed forces since January 1, 1982." The figures used are those that appear in the July 27, 1982 certification of El Salvador by the U.S. Department of State. What is missing from the certification, however, is anything that would reflect these crucial sentences in the cable from Ambassador Hinton:

The Embassy cannot confirm it independently.
Therefore, we recommend that it be used with
proper caveats.**

The July 27 certification contained no "proper caveats" with respect to its assertions that 109 members of the Salvadoran armed forces had been disciplined for various offenses. The U.S. Congress and the American public were asked to rely on this "evidence" that the Salvadoran security forces were complying with the requirements for certification even though, as Ambassador Hinton warned, "The Embassy cannot confirm it independently."

*See Appendix F.

**Ibid.

In January, 1983, an Americas Watch representative visiting San Salvador learned from the United States Embassy that the Embassy was then attempting to "spot-check" the information that had been relied upon in the certification that took place more than five months earlier.* Even if that spot-check tends to substantiate the information submitted five and a half months previously, it does not justify the failure of the Department of State to supply the "proper caveats" as recommended by the U.S. Embassy in San Salvador when the Embassy could not verify the information independently. Nor does it justify the deception practiced by the Department of State when it pretended in correspondence to the Americas Watch that the details sought by the Americas Watch were in the Department's possession but had "been provided to us on a very confidential and privileged basis by the Salvadoran government."

In the course of interviewing U.S. Embassy officials in San Salvador, additional light was cast on the significance of any prosecutions that may actually have been instituted against members of the Salvadoran armed forces. An Embassy official indicated that, in tabulating these prosecutions, any case involving violent crime against a civilian by a member of the security forces - such as robbery, rape, murder or assault - is considered to be a prosecution for a human rights violation.

*Interview, January 10, 1983

A political motive need not be present. Accordingly, if a member of the security forces rapes the wife of his commanding officer, the prosecution involves a human rights violation. If a member of the security forces robs a coffee grower allied to the security forces, a prosecution involves a human rights violation. And so on.

Though such a definition of human rights violations is arguably defensible, it plainly does not address the central concerns of Congress in enacting the law requiring certification. Tens of thousands of Salvadorans have been slaughtered in political violence. For the Government of El Salvador to demonstrate that it is complying with U.S. law requiring that it achieve control over all elements of its armed forces to end torture and murder, it must prosecute those members of the armed forces committing political torture and murder.

An example of a prosecution that would be meaningful involves the January 30-31 massacre in the San Salvador suburb of San Antonio Abad. Senator Claiborne Pell asked Assistant Secretary of State Thomas Enders about this at Congressional hearings on February 1, 1982:

Senator PELL. In connection with the reported human rights situation, I notice that, according to a report by Christopher Dickey in the Washington Post, the armed forces announced that troops killed 19 people in a successful action against leftist

guerrillas, and then the article goes on to point out that relatives and witnesses insist the people killed in the raid had no political connections, and were grabbed from their homes by uniformed men wearing masks. Included among the dead were a 57-year-old woman and a 16-year-old boy, and teenage girls said they were raped by troops, et cetera, et cetera. Do you think this is an accurate statement?

Secretary ENDERS. An accurate statement by Mr. Dickey?

Senator PELL. Yes.

Secretary ENDERS. I don't know. I don't know what happened two nights ago. I don't know whether this was or was not the kernel of a guerrilla organization, as maintained by the Government of El Salvador, and I don't know whether the claim of the Government of El Salvador to have picked up substantial quantities of ammunition and guns there is an accurate one or not. We are trying to find out. However, I do deplore what appears, however you answer those questions, to be the excessive violence of this action, and I find it very difficult to buy the notion that there was in fact a fire fight, and that this was the result of it. But we are trying to find out what did happen. *

A bi-partisan Congressional delegation that visited El Salvador shortly after this incident investigated what happened in San Antonio Abad. Rep. Thomas Harkin subsequently told the

*Hearings before the Subcommittee on Western Hemisphere Affairs, Committee on Foreign Relations, U.S. Senate, February 1, 1982, p.97

House Inter-American Affairs Committee:

The Embassy sent an investigator to the morgue. He saw seventeen bodies. Most of these people had been shot in the back of the head and the investigator reported that some had powder burns clearly around each bullet hole, indicating the people had been shot at very close range ... The evidence in this case is overwhelming. The first Brigade of the Salvadoran army carried out a massacre of unarmed people in San Antonio Abad.*

Yet according to the Department of State's submission of responses to Representative Zablocki, "No formal disciplinary action has been taken. The commander of the First Brigade maintained that the incident was the result of a fire fight. The Armed Forces General Staff has accepted the commander's account that it was a justifiable action."** No explanation is provided here of how shootings in the back of the head at close range and rapes of teenage girls by troops could be a "result of a fire fight." Even the Department of State is moved to comment about this incident that, "The Embassy interviewed eyewitnesses and based on their accounts, believes that, at least, some of the dead were uninvolved civilians."*** Similarly, in the case of the June 1982 torture of a volunteer for the Salvadoran Green Cross by the Salvadoran National Police

*Testimony, March 2, 1982

**See Appendix D.

***Ibid.

that had been reported to the Department of State by the U.S. Embassy in Salvador (see section on Torture) there has been no disciplinary action and no prosecution.*

The foregoing indicates:

- 1) that the State Department misled the Congress and the public when it presented figures on disciplinary actions against Salvadoran troops because it did not use the "proper caveats" recommended by the Embassy.
- 2) that the State Department's use of the figures 109 and "at least 20" were misleading as the majority of these matters did not involve human rights abuses or were not considered sufficiently serious by Salvadoran authorities to warrant prosecution.
- 3) that the State Department's assertion that detailed information on these cases had been furnished to it "on a very confidential and privileged basis" was misleading

*Ibid. The response to the question on the Green Cross worker is a particularly noteworthy example of evasiveness by the Department of State.

as this information was not available to the Department of State when it made that assertion.

- 4) that at the time of the July 27 certification and as late as December 2, the State Department had only the foggiest notion of what had actually taken place with respect to the prosecution of members of the armed forces for human rights violations even though it cited such prosecutions as a main justification for the July certification.
- 5) that as of December 2, no one of these individuals had been convicted in a human rights related case.
- 6) that even if the "spot checking" now taking place indicates that there are 44 prosecutions actually going forward, the Department of State's definition of human rights cases in this instance is so elastic as to deprive figures it may provide to Congress of any significance in indicating that the concerns of Congress in enacting the certification law are being met.

Our examination of this central aspect of the July 27 certification indicates that the Department of State misled the Congress and the American public. The Department of State lacked any basis for the claim that the supposed actions against the 109 and "at least 20" indicated compliance with U.S. law.

Command and Control

Aside from the question of disciplining members of the armed forces who have committed human rights abuses, there remains the issue of command and control: are Salvadoran officers achieving effective control over their subordinates so as to end human rights abuses, as the law requires. The following incidents demonstrate that such control has not been achieved, a fact that should preclude certification.

- On December 9, 1982, the Salvadoran government-sponsored Human Rights Commission located Daniel Ceron Ortega, who had been abducted on December 2 by the National Police, in a cell of the National Police. According to the governmental Human Rights Commission's coordinator, Monsenor Freddy Delgado, "...you cannot blame [National Police Chief] Lopez Nuila as the one responsible. A father doesn't always know what his children are doing and this concept can well be applied to other sectors of society.** The incident is even more embarrassing because Lopez Nuila is a member of the government's Human Rights Commission.

*El Mundo, December 10, 1982

- On October 20, 1982 National Policemen armed with sub-machine guns and pistols broke into the offices of UPI, AP, NBC News, ABC NEWS, CBS News, and UPI Television, in an operation characterized by the commanding officer as "routine" and "superficial." According to the New York Times, "...eight national police agents detained the bureau manager of United Press International, John E. Newhagen, for about an hour as they inspected desks, reporters' files, photographic archives and radio equipment in the news agency's office at the Hotel Camino Real.**

Was this search, which was vigorously protested by UPI's President William J. Small, the work of lower-ranking officers without the knowledge of National Police Chief Lopez Nuila? If Lopez Nuila ordered the operation, how can it be stated that the Salvadoran government respects democratic freedoms, including freedom of the press?

*UPI, "Salvador Police Search American News Offices," New York Times, October 21, 1982.

- During the week of October 14-21, the Treasury Police carried out a series of abductions of leading members of the Revolutionary Democratic Front. An official of the U.S. Embassy has claimed that "this was not the work of the High Command ... it is the last thing [Minister of Defense] Garcia or [President] Magana would want."* This same official also admitted, however, that Treasury Police chief Colonel Francisco Moran knew of the abductions and that his subordinates would not have acted without high-level clearance. Is not Col. Francisco Moran a member of the High Command? And is not the fact that the FDR leaders were kidnapped against the apparent wishes of President Magana and General Garcia a flagrant example of the lack of command and control?

*Interview, January 10, 1983.

Part IIIU.S. Human Rights Policy in El Salvador

Over the past several months top U.S. officials have issued a series of contradictory statements about U.S. human rights concerns in El Salvador. On October 29, 1982 U.S. Ambassador to El Salvador Deane Hinton warned Salvadoran businessmen in a strongly-worded speech that unpunished murders and abductions tied to "some elements of the security forces" and the "absence of an effective system of criminal justice" could jeopardize continued U.S. economic and military aid. Hinton declared that "...since 1979 perhaps as many as 30,000 Salvadorans have been killed illegally, that is, not in battle," and that a right-wing "Mafia" which tolerated these acts "must be stopped."*

The speech, considered a departure from the "quiet diplomacy" ostensibly practiced by the Reagan Administration regarding human rights matters, drew instant repudiation from Washington. White House officials expressed "surprise" and "concern" over the fact that "the decibel level had risen higher than our policy has allowed in the past" and added that, "...if anything, we learned in prior administrations that high public rhetoric frequently was counterproductive."**

*Ambassador Deane Hinton, speech before the American Chamber of Commerce in San Salvador, October 29, 1982.

**Bernard Weinraub, "U.S. Envoy to El Salvador is Ordered to Stop Criticizing Rights Abuses," New York Times, November 10, 1982.

State Department officials later indicated that the speech had been cleared in the State Department but not the White House.

A U.S. Embassy official in San Salvador admitted that the White House disavowal of Hinton's remarks was "a slap in the face" to the Ambassador and that the "White House recognized it had made an error" in speaking out publicly.* Although White House spokesman Larry Speakes eventually stated that Hinton retained "the full faith and confidence" of President Reagan,** the episode served to send a strong message to the Salvadoran armed forces and right: that they could count on the Reagan administration to soft-pedal criticism about human rights violations, and unceremoniously rebuke those who went public with their concerns.

On December 3, 1982 President Reagan himself stated that "on the basis of everything we know now, yes, of course" the United States would certify El Salvador for continued U.S. aid.*** The remarks were made in San Jose, Costa Rica, following a one-hour meeting with Salvadoran President Alvaro Magana.

*Interview, U.S. Embassy official, January 10, 1983.

**Bernard Weinraub, "White House Says President Has Faith in Salvador Envoy," New York Times, November 11, 1982.

***Christopher Dickey, "Reagan Sees Rights Gain in Salvador," Washington Post, December 4, 1982.

In Washington, Assistant Secretary of State for Inter-American Affairs Thomas Enders, attempted to explain away Reagan's comments, made almost two months before the administration's certification to Congress was due. Enders told reporters that the statement regarding El Salvador was not meant to convey the impression that a decision on certification had been made.*

Like the public criticism of Ambassador Hinton, however, Reagan's statements would appear to undercut U.S. human rights policy by indicating that U.S. certification of El Salvador was a foregone conclusion. Moreover, press reports in late October to the effect that Under Secretary of Defense Fred Ikle visited El Salvador following the abduction of the FDR and labor leaders to impress on the Salvadoran military the need to curb human rights abuses were, apparently, misleading.** According to a U.S. Embassy official in San Salvador, "Ikle's visit was programmed long in advance ... he was not sent to splash cold water in their faces and straighten them out."***

Thus on the few occasions during the last six months in

*John Goshko, "Reagan Remarks Draw Explications," Washington Post, December 7, 1982.

**See, for example, Bernard Weinraub, "U.S. Send Official to Warn Salvador on Rights Abuses," New York Times, October 27, 1982.

***Interview, January 9, 1983.

which U.S. human rights concerns were a matter of public debate, the record would indicate that U.S. policy was at best inconsistent, at worst indifferent regarding human rights in El Salvador.

The Impact of U.S. Military Training on Human Rights

Since March 1981, the United States has trained at least three rapid-reaction counterinsurgency battalions in El Salvador - the Atlacatl, Ramon Belloso, and Antonal. According to Chief of the U.S. Southern Command Lt. Gen. Wallace Nuttings:

Our training emphasizes a leadership focus on human rights and professional responsibility. We continually stress matters of military and citizenship importance to include the treatment of captured combatants and protection of non-combatants in countering guerrilla warfare. In this connection, about 11% of the cadet program of instruction at Fort Benning [where 500 officers of the Ramon Belloso battalion began training in January 1982] and about 18% of the infantry battalion program of instruction at Fort Bragg [where 957 soldiers of the Ramon Belloso battalion completed training in May 1982] were devoted to internal defense and development matters and discipline.*

According to an official at the U.S. Embassy in San Salvador, determining whether or not U.S. training has been effective in curbing human rights abuses is a "subjective judgment." He explained that because U.S. trainers are not allowed to accompany Salvadoran soldiers on battle missions, information on the performance of troops was sketchy.**

*Nutting testimony, Senate Foreign Relations Committee, August 3, 1982, p. 6

**Interview, U.S. Embassy official, January 9, 1983.

Moreover, according to Amnesty International:

Units of the regular military continue to be regularly cited as responsible for arbitrary detentions and abductions in the capital and in towns throughout the country, while in the Salvadoran countryside, regular Army as well as the new U.S. trained rapid deployment forces, the Atlacatl, Ramon Belloso, and Antonal brigades are frequently cited as responsible for massive killings of non-combatant civilians.*

Furthermore, the program of instruction for Salvadoran soldiers at Fort Bragg and Fort Benning included little human rights training, and certainly less than claimed by Lt. Gen Nutting in his August testimony. Documents received under the Freedom of Information Act demonstrate that during their entire 4-month stay at Fort Bragg, students received only:

- two 2-hour conferences on "Develop and Maintain Popular Support," defined as
"... students will discuss methods to develop and maintain popular support and undermine guerrilla propaganda."
- a two-hour conference on "Care and Control of Indiginous (sic) Personnel," covering "care and control of civilians"

*Amnesty International, "Assigning Responsibility for Human Rights Abuses: El Salvador's Military and Security Units," September 1982, p. 3

to include health and welfare, refugee control, and treatment of indiginous (sic) personnel."

- a one-hour and 50-minute lecture on the "Law of Land Warfare/Geneva Convention."

In addition, students received two eight-hour conference - demonstrations on "Security and Intelligence," only a portion of which was devoted to "how to properly handle and process a captured prisoner."** The total hours of instruction received by Fort Bragg recruits that was even peripherally related to human rights stands at less than 3% of their entire program. This contrasts sharply with the assertion by Assistant Secretary of State for Human Rights Elliott Abrams that:

Respect for human rights and proper conduct toward the civilian population has been a principal part of our training of Salvadoran military personnel.**

Similarly, only 5.7% of the training received by Salvadoran officers at Fort Benning (36 hours out of 633) was devoted to "Internal Defense and Development/Psychological Operations/Civic Action," the portion of the program "designed to produce not only

*Fort Bragg Program of Instruction, Phases I, II, III, January 13-May 4, 1982.

**Testimony before the House Foreign Affairs Committee, July 29, 1982, p. 6

competent, disciplined officers, but also leaders with a well developed respect for human rights.** It is interesting to note, moreover, that one of the training manuals used at Fort Benning defines counter-subversion as "that part of counterintelligence aimed at destroying the effectiveness of subversive activity by means of detection, identification, exploitation, penetration, manipulation, deception, and repression of individuals, groups, or organizations that carry out or are capable of carrying out such activities.***

In practice, there is little evidence to suggest that non-combatant casualties have declined as a result of U.S. training. Part of this has to do with the conduct of the war, where air and artillery attacks against guerrilla-held positions have become increasingly common in recent months. As a U.S. training manual points out:

The use of artillery or air support against a town from which fire from hidden snipers is being received would possibly neutralize the guerrilla action, but is almost certain to provoke the enmity of the population as a result of casualties among the civilian population.***

*Program of Instruction, Fort Benning, Georgia; and Deputy Assistant Secretary of Defense Nestor Sanchez, letter to Amnesty International, March 3, 1982.

**U.S. Department of Defense, Field Manual 31-16, p. 18. Emphasis added.

***Field Manual, 31-16, op. cit., p. 72.

This dilemma was perhaps best articulated by Colonel Domingo Monterroso, commander of the U.S.-trained Atlacatl battalion, following a "clean-up" operation in the province of Chalatenango:

It is natural that in these subversive redoubts the armed men are not there alone ... that is to say, they need their 'masses,' people, women, old people, or children ... they are all mixed up with the subversives themselves ... so in the clashes and in the distinct operation we carried out, it's natural that there were a series of people killed, some without weapons, including some women, and I understand, some children ...*

*Christopher Dickey, "U.S. Tactics Fail to Prevent Salvadoran Civilian Deaths," Washington Post, June 10, 1982

APPENDIX A

Center for National Security Studies

October 29, 1982

The Honorable George Shultz
 Secretary of State
 U.S. Department of State
 Washington, D.C.

Dear Mr. Shultz:

We are writing on behalf of the Americas Watch and the American Civil Liberties Union to express our concern about the recent arrest or disappearance of some fifteen political and labor leaders in El Salvador. We would appreciate your earliest possible response to a number of questions and to our suggestion concerning the United States Government's proper response to the events.

As you know, prior to the Administration's January 1982 and July 1982 certifications that the Government of El Salvador was, inter alia, making an effort to respect human rights, our organizations released thoroughly-documented studies showing that the Salvadoran government was engaged in systematic and massive violations of the human rights of Salvadoran citizens. Accordingly, we called on the Administration not to certify. This accumulation of evidence was apparently not persuasive to the Reagan Administration and the certifications were made, although the factual record compiled in our reports was not refuted.

According to an account in the New York Times of October 27, 1982, the recent arrests and disappearances in El Salvador, like the collapse of attempts to prosecute a suspect in the murder of two AIFLD workers, are being taken seriously by Administration officials as a possible obstacle to future certification. This concern is well-founded. The problem is not simply that Salvadoran citizens have been arbitrarily arrested, imprisoned without due process of law, and in some cases possibly murdered; at least, that has not been an obstacle in the past. The problem is that by arresting leaders of lawful and moderate opposition parties like the National Revolutionary Movement the Salvadoran Government has sent a signal that democracy in El Salvador is dead. Most of the opposition leaders had already left the country out of fear for their safety although, as Ambassador Deane Hinton said last week, "there were a few courageous ones that hung on." Now many of these are in jail or have disappeared.

Continued/ . . .

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A project of the ACLU Foundation and the Fund for Peace.

The Honorable George Shultz
October 29, 1982
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The Reagan Administration has built its case for continued support of the government of El Salvador primarily on the argument that the March 28 elections demonstrate that El Salvador is working out its problems democratically. We challenged that view on the ground that the elections lacked validity because the opposition reasonably feared to participate. Regrettably, the recent disappearances tend to confirm our doubts about the electoral process in El Salvador.

We were glad to see a report that Under Secretary of Defense Fred Ikle was instructed to make clear to Salvadoran officials that U.S. military aid will end unless the human rights situation in that country improves. United States pressure on the Government of El Salvador works; that was shown by the dismissal from the security forces of individuals suspected of murdering Christian democratic officials, and by the resumption of the land reform program, earlier this year. Forcefulness by the United States is required once again.

Of course, forcefulness must be expressed by actions as well as attitudes. We would appreciate your answers to the following questions:

- a) We understand that you have confirmed the identities of some but not all of the eight persons the Salvadoran Defense Ministry has said are in custody; what are the names of those whose identities you have confirmed?
- b) What are the charges against them?
- c) What steps are you taking to confirm the identities of others of the eight in custody?
- d) What steps are you taking to discover the whereabouts of the seven other persons kidnapped? Have you requested information from Salvadoran government and security officials? Have you taken other steps including tasking the CIA and other appropriate agencies?
- e) A September 22, 1982 staff report by the House Intelligence Committee noted that "intelligence on the entire problem of political killings and of the groups reported to engage in them has been weak" and that some intelligence community personnel "have simply not considered the subject of Salvadoran rightist violence as a target for collection." (pp. 21, 22) What steps have you taken to improve intelligence in this area?

Continued/ . . .

The Honorable George Shultz
October 29, 1982
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f) What concrete steps have you asked the Government of El Salvador to take with respect to the recent arrests and disappearances? Have you requested an investigation of the disappearances? Have you insisted that the persons in custody be tried under civilian law and accorded the rights guaranteed by the Salvadoran Constitution and not held or tried under Decree 507?

g) If the Government of El Salvador holds and tries the eight persons in custody under Decree 507, or if it does not give you information concerning the other seven persons kidnapped, will you certify in January 1983 that the Salvadoran Government is making a concerted and significant effort to comply with internationally recognized human rights?

We strongly urge you to insist that the eight persons in custody be accorded the rights guaranteed by El Salvador's Constitution and by its Code of Criminal Procedure and that they not be detained further or tried in military courts under the extra-constitutional procedures of Decree 507. As you know, persons submitted to those procedures may be held for 180 days without being informed of the charges against them and may be held for an additional 120 days even if "the judge has found no good cause to hold the suspect." In practice such detention continues indefinitely. The decree also encourages the use of torture by making extra-judicial confessions admissible at trial proceedings.

Specifically those being held should be brought before a civilian judge under a writ of habeas corpus and should be informed of the acts imputed to them, permitted to consult with lawyers and be safeguarded from torture. The judge should order the individuals released unless he determines that the existence of a specific crime punishable under the Constitution of El Salvador and under its international law commitments has been proven and that there is sufficient evidence that the accused participated in the crime. The procedures we call for are embodied in Salvadoran law. They were applied to the accused murderers of the Americans and should be applied in these cases. We believe that the application of these procedures would require the immediate release of those now being held.

We note that Salvadorans suspected of the murders of American citizens have not been subject to military courts under Decree 507 but to the civilian judicial system. The United States Government should not condone by inaction a practice in which those arrested for political reasons and accused of no specific illegal acts whatsoever are denied constitutional guarantees accorded those arrested for alleged involvement in the murders of United States citizens.

Continued/ . . .

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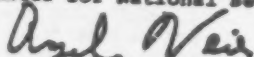
Indeed, on August 5 we suggested in a letter to the Assistant Secretary for Human Rights and Humanitarian Affairs that the United States use its influence to work for the repeal of Decree 507. We pointed out that the repeal would directly strengthen the civilian judicial system in El Salvador by submitting to its jurisdiction a class of cases for which the political will to prosecute has been clearly demonstrated, while at the same time reducing the role of extra-constitutional measures in preserving civil order. The repeal would also be a significant step toward compliance with internationally recognized human rights in our view. We would value your thoughts on this proposal.

We look forward to your earliest possible answers to the questions we have asked and to our suggestion that the United States insist that the political leaders recently arrested be held and tried, if at all, under the civilian judicial system and not under the procedures of Decree 507.

Thank you for your attention to this matter.

Sincerely,


Morton H. Halperin, Director
Center for National Security Studies


Aryeh Neier, Director
Americas Watch Committee

APPENDIX B



AMERICAS WATCH

☐ REPLY TO: 26 WEST 44TH STREET, NEW YORK, NEW YORK 10036 (212) 640-8460
 ☐ REPLY TO: 706 G STREET, S.E., WASHINGTON, D.C. 20003 (202) 648-8336

Orville H. Schell
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 DIRECTOR
 WASHINGTON OFFICE

August 4, 1982

Mr. Elliott Abrams
 Assistant Secretary of State
 for Human Rights and
 Humanitarian Affairs
 Department of State
 Room 7802
 Washington, D.C. 20520

Dear Elliott:

In monitoring compliance by the government of El Salvador with the conditions for certification, one of the issues on which the Americas Watch and the American Civil Liberties Union will focus particularly from now on is disciplinary actions and criminal prosecutions against members of the Salvadoran security forces. We ask for your cooperation. In particular, at this time, we request information on the 109 members of the Salvadoran armed forces and the "at least 20" civil defense members referred to in the July 27 certification message as having been disciplined and/or remanded to the civilian courts.

We would like the names of these persons. If the names cannot be provided for any reason, we suggest that you identify them to us with code numbers to which we can refer when we submit requests to you for further information on the proceedings against them.

In connection with each person identified by name or code number, please let us know:

- a) the security force with which the person is affiliated
- b) his rank
- c) the charge
- d) the place where the incident that is the subject of the charge took place and the date when it took place

The Americas Watch is a Committee of the Fund for Free Expression and it is affiliated with the Helsinki Watch Committee.
 The Lawyers Committee for International Human Rights is Counsel for the Americas Watch.

Mr. Elliott Abrams

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August 4, 1982

- e) the identity of the victim(s), if known or a description of the victim(s) (e.g., peasant, journalist, relief worker)
- f) a description of the incident that is the subject of the charge that is sufficiently detailed so that it is possible to determine whether the charge involves an abuse of internationally recognized human rights or whether it involves some other kind of disciplinary infraction or criminal offense. If the charge is murder, for example, is it a politically motivated murder or a murder in connection with a robbery or some other non-human rights related matter?
- g) whether other members of the Salvadoran armed forces have been disciplined or remanded to the civilian courts in connection with the same incident and, if so, their names or the code numbers which have been assigned to them.
- h) whether the person is in detention pending resolution of any criminal charges and, if so, where the person is being detained and under what circumstances
- i) what stage has been reached in any criminal proceedings that may be underway against the person

As I am sure you understand, without this information it is impossible to evaluate the significance of the assertion that members of the Salvadoran armed forces and civil defense members have been disciplined and/or remanded to the civilian courts. Accordingly, we anticipate your cooperation in furnishing this information to us.

Best regards.

Sincerely,

Aryeh
Aryeh Meier

APPENDIX C

United States Department of State

Washington, D.C. 20520

September 27, 1982

Mr. Aryeh Weier
Americas Watch
36 West 44th Street
New York, New York 10036

Dear Aryeh:

Thank you for your letter of September 3. You did not enclose a copy of the correspondence to which you referred, but it was easy to conclude that it was to your August 4 letter regarding specific information about the 109 members of the Salvadoran armed forces mentioned in the justification of the certification.

The names of the disciplined individuals and other information have been provided to us on a very confidential and privileged basis by the Salvadoran government, and obviously we are not in a position to divulge that information to private individuals or organizations. Given the sensitivities involved, it would be more properly the responsibility of the Salvadoran government to either disclose or withhold this information, and you may wish to address an inquiry to the Embassy of El Salvador. Tutela Legal of the Archbishopric may also be able to provide some information on individual cases.

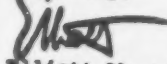
I have other reservations about obtaining and releasing the information you requested. I am reluctant to task an already overburdened Embassy staff with obtaining the details of these cases unless it would actually serve a practical purpose in assisting you to monitor their current status. Given our inability to provide you with the names of the individuals, I do not believe that Americas Watch would effectively be able to monitor these cases within the Salvadoran judicial system.

We believe it is important, however, for us to follow these cases as closely as possible, and we have requested specific information regarding their current

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judicial status. I will certainly share as much of this forthcoming information as possible with you, and will do so as soon as possible. In the meanwhile, please excuse the tardiness of this reply.

Sincerely,



Elliott Abrams
Assistant Secretary
Bureau of Human Rights and
Humanitarian Affairs



United States Department of State

Washington, D.C. 20520

NOVEMBER 30 1982

Dear Mr. Chairman:

Thank you for your letter of October 15 commending the Department on our recent efforts to reduce tension and promote political reconciliation in Central America.

Enclosed are our interim responses to questions that accompanied your letter. Unfortunately, there are no offices in El Salvador that maintain readily available statistics on your concerns. For example, the Salvadoran armed forces do not have a consolidated report on personnel disciplined for certain crimes. Also, human rights organizations and peasant groups do not provide regular summaries and analyses on disappearances and agrarian reform issues. It was only at the urging of our Embassy that these groups collected the data and provided us with summary statistics prior to the July certification. However, I have directed our Embassy to provide the Department, to the fullest extent possible, answers to your inquiries. I expect those responses to reach the Department within two weeks.

Thank you for your continued support on these and many other issues.

With cordial regards,

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Enclosure:

As stated.

The Honorable
Clement J. Zablocki, Chairman,
House Foreign Affairs Committee,
House of Representatives.

1. What are the figures on the number of political murders committed in El Salvador during July, August, and September 1982, as compiled by the Salvadoran press, the Commission of Justice and Peace of the Archdiocese of San Salvador, the University of Central America, the Human Rights Commission of El Salvador, and the Committee of Mothers; and what is the Department's assessment of the numbers?

The numbers of civilian deaths attributable to political violence, taken from press reports and reported by the Embassy were: July, 163; August, 196; and September 162. These figures should not be considered absolute, but do reflect trends. The current level of civilian deaths is approximately one third of what it was 18 months ago. The Embassy has not changed its methodology in reporting these statistics in the last two years. In the aggregate, we believe that the levels of civilian deaths attributable to political reasons has been, and remains, at substantially reduced levels.

Statistics from the other groups are not yet available. These organizations do not regularly release periodic summaries. Our Embassy, however, will attempt to obtain the information through our contacts.

2. From the same sources, what are the figures on disappearances for the same three months?

Summaries of disappearances are even more difficult to compile because there is usually little physical evidence available. The Committee of Mothers does keep some information on disappearances on a case-by-case basis within the San Salvador metropolitan area. The Committee relies on reports from family members of the disappeared.

Embassy officers have tried unsuccessfully on several occasions to contact the Committee. We will continue this effort and report further on disappearances if our efforts bear fruit.

The International Committee of the Red Cross (ICRC) also compiles information on individual disappearances; however, as you are aware the ICRC prefers to maintain the strictest confidentiality with the Government of El Salvador.

3. Has the military ceased its summary executions of prisoners taken in combat situations, and if so, what evidence exists of this change of practice?

The War Powers Act enjoins U.S. military personnel attached to the Embassy from observing, first hand, the activities of the Salvadoran Armed Forces during military operations. Therefore, the Embassy must rely on information provided to us by the armed forces and also press releases that list the numbers of prisoners taken in combat.

Both President Magana and Minister of Defense Garcia have ordered that the lives of prisoners taken in combat be protected. These orders have begun to have an effect. Twenty-two prisoners were taken in an August 1982 operation in San Vicente. The capture of three "terrorists" was announced by the military following an operation in Usulután Department in late September. Information on combat prisoners has not been available from the military for the last month.

4. What are the figures on evictions from Phase III lands as compiled by the Government of El Salvador, the UPD and UCS and other appropriate sources and broken down by these periods:

- January 28 - March 28, 1982;
- March 28 - May 18, 1982;
- May 18 - July 27, 1982;
- July 27 to the present

Eviction of farmers who have a legitimate claim to land under the terms of the agrarian reform laws is an illegal act. Figures on the number of times the law has been violated are not precise, and vary according to source. The Salvadoran Government defines evicted farmers as those who had filed a claim for land and then filed a complaint that they had been evicted. The UCS uses sample surveys and complaints from its members to develop figures, without attempting to establish that the farmers in question indeed had a right to the land. The UPD uses the UCS as a source for this information. I am not aware of any other reliable sources for figures on evictions.

According to the Salvadoran Government, a cumulative total of 928 farmers had been evicted as of the March 28 elections, while the UCS reported 3,795 as of that date. Neither the government nor the UCS have numbers for the March 28-May 18 period.

There was a surge in evictions following the enactment of Decree 6. By July 27, the government recorded 3,477 new evictions, while the UCS claimed that farmers evicted totaled 4,107. As of November 26, the cumulative total of

evicted farmers was 4,786, according to the government, while the UCS has the names of 4,726 farmers who claim to have been forced from their land. Both sources indicate that the pace of evictions has been substantially reduced. Only 9 complaints of eviction were filed with the government during October.

5. What are the figures for reinstatement to Phase III lands, from the same sources during the same periods?

The government is making a determined effort to reinstate farmers who have been illegally evicted. Unfortunately, I do not have figures on reinstallation which match the time periods you specify. According to the UCS, a total of 1,705 of its members have been reinstalled on their land. The Salvadoran Government reported that 2,416 farmers had been returned to their land as of July 27, and the current figure is now 2,436.

6. What are the figures from these sources on re-evictions after reinstatement during these periods?

According to the UCS, only 84 farmers have been re-evicted after being returned to their land. The government does not record complaints of re-eviction, but includes such complaints in its figure of total evictions.

7. How many landlords and/or other persons have been punished for forcing Phase III tenants from their lands, and what was the nature of the punishment?

Under the arbitration system established by executive decree to settle land disputes, the former landowner must give up property to new owners who qualify under the terms of the agrarian reform laws. Civil and military officials hold hearings to settle land claims in the event of dispute. Some disputes are turned over to the court system for settlement. To date, no landowners have been fined or jailed over land questions.

8. What recommendations were made by the commission of campesino, government, military and private sector representatives with regard to the legal framework and implementation of the land reform program? Have these recommendations been implemented?

The commission made several recommendations. In summary, it suggested that Decree 207 (which established Phase III of the agrarian reform) be modified to reflect or clarify the following:

1. A clear explanation of who is entitled to claim land;
2. Continuity in the processing of title applications;
3. Clarification of the exact period of time during which Decree 6 will remain in effect (Decree 6 of May 18, 1982, allowed rental of land for one crop cycle and was perceived by some as altering the agrarian reform process);
4. Participation of campesino organizations in promotion of title applications;
5. Participation by armed forces in guaranteeing the rights of Decree 207 beneficiaries and in resolving conflicts and evictions;

6. Participation by civil and paramilitary authorities in facilitating the agrarian reform process;
7. Establishment of procedures for resolving conflicts between new and former landowners;
8. Creation of precise procedures for returning evicted campesinos to their land;
9. Validation of provisional titles for obtaining credit and physical possession of land;
10. Consolidation of the procedure for granting final legal title to land;
11. Improvement of procedures for compensation to former landowners;
12. Legal guarantee of the rights of campesinos to land from which they have been illegally evicted;
13. Guarantee of rights to access to and from land;
14. Encouragement of small farmers to claim land;
15. Clear definition of dispute settling and appeal procedures;
16. Discounts for those small farmers who pay off their mortgages within five years;
17. Assistance for credit, marketing and rural organizations; and
18. Guarantee of the right of landowners to hold a minimum of 12 acres if this land is the sole means of support.

These recommendations were enacted by executive decree, which has the force of law in El Salvador.

9. The UCS has stated (Dec. 1981) that clear Phase III titles are essential for beneficiaries' protection of their rights (presumably including the right not to be violently evicted). What is the number of final titles issued since July 27, and what is the government's timetable for completing the issuance of all final titles under Phase III?

As of the end of October, 408 final titles had been issued. The Salvadoran Government would like to accelerate the process but lacks the funds to do so. Under the terms of the agrarian reform law, former owners must be paid for their land before final titles and 30 year mortgages can be signed by new owners. Lack of money for compensation prevents the government from issuing large numbers of titles. Until government resources permit, no realistic "timetable" for final titles will be possible.

10. Why has the number of estimated total beneficiaries of Phase I declined by more than 10 percent between December 28, 1981, and June 28, 1982, as indicated in the Certification Report (Statistics on Agrarian Reform in El Salvador, appendix)? To what extent is the decline attributable to violence against beneficiaries?

The reduction in Phase I beneficiaries was caused by continued insurgent activity in some parts of the country. Forty-one of the 328 properties claimed by the government under the agrarian reform have been abandoned because of civil conflict. Recurring guerrilla attacks and sabotage have forced about 3,000 farmers from their land.

11. Was the Salvadoran military/government investigated the following prominent cases of gross human rights violations, and what were the results, if any, of those investigations; has the Embassy made any determination as to who was responsible for these incidents?

— January 30-31 massacre in San Antonio Abad:

According to the version of events provided by the Salvadoran military, soldiers had moved against a clandestine cell of the armed left located in the suburb of San Antonio Abad. When the military entered the area they reportedly received weapons fire from adjacent buildings. The casualties were a result of the exchange of fire that ensued, according to the military's explanation.

No formal disciplinary action has been taken. The commander of the First Brigade maintained that the incident was the result of a firefight. The Armed Forces General Staff has accepted the commander's account that it was a justifiable action. Therefore, no formal charges have been brought or disciplinary actions initiated. The Embassy interviewed eyewitnesses and based on their accounts, believes that, at least, some of the dead were uninvolved civilians.

- April 18 reported massacre of 48 civilians, including 25 children, in canton Barrios, Department of Morazan:

The source of the information was a group of guerrillas who led journalists to the alleged scene and

provided details on how it occurred. Since the source of the story was the guerrilla group, and because no bodies were found, the Government of El Salvador believes the allegations to be dubious and has not undertaken any action to investigate them.

-- March 18 "incursion" by army and Treasury Police personnel at the Mariona prison facility, which was subsequently criticized by junta member Morales Ehrlich because of the violence inflicted on his son and others:

On March 18, 1982, elements of the security forces, searching for "subversive" literature, entered Mariona Prison, which houses most of the country's political prisoners. Although there were allegations of mistreatment of some prisoners, including the son of the junta member Morales Ehrlich, doctors at the local hospital (Polyclinica) determined that there was no evidence of beatings or torture.

These doctors and other sources indicated that the son of Morales Ehrlich was treated for a nervous disorder following the security force search. Ehrlich was released a few weeks after this episode.

- The murders of civilians in Chalatenango during a "clean-up" operation there in early June, as acknowledge by the commander of the Atlacatl Battalion and reported in the U.S. press:

The commander of the Atlacatl Battalion stated to members of the U.S. press that some noncombatant civilians occasionally die during combat operations. The Embassy agrees with this statement. All too frequently, guerrillas, who routinely travel with civilian sympathizers and who usually have advance warning of impending military operations, do not take adequate measures to remove their noncombatant civilians to secure areas.

- The torture allegedly inflicted on a medical volunteer of the Green Cross by the National Police in a secret cell, as reported in the Washington Post in July based on an Embassy document:

We condemn torture under any circumstances. Torture is cruel, repugnant and obviously defies all human rights standards. In the handful of cases dealing with the use of torture by the Salvadoran Government which have come to our attention, we have made the strongest of approaches to the Salvadoran authorities. We understand that the higher levels of the Salvadoran Government and national security organizations have taken action to end abuses. I do not believe that the use of torture by the Salvadoran security forces is a widespread practice as it once was. But we cannot verify that it has totally ended.

- The dumping of corpses at the El Playon lava bed, which the authorities promised to investigate last year:

In the best of circumstances it would be difficult to determine those responsible for the murders of people whose bodies have been found at El Playon. There have been no reports of eyewitnesses to these murders or to the dumping of the bodies. Given the current state of disarray of the judicial system, it is unlikely that the perpetrators can be found. Nevertheless, the Embassy has reported that, to its knowledge, bodies have not been found at El Playon for some time. .

12. The Certification Report refers to 109 military personnel disciplined since January 1, 1982. Of these, 17 were charged with alcohol-related abuses; another 15 are otherwise not to be included (absolved, etc). For the remaining 77 cases, in order to determine whether these represent vigorous discipline in response to human rights violations, please provide:
 - number and ranks of officers disciplined for each of three types of crime; murder, assault and rape; and how these officers have been punished;
 - the branch of the security forces from which each of these officers came;
 - number and ranks of officers in detention pending resolution of civil cases; circumstances of their detention, and timetable (expectation) for the resolution of their cases;
 - for enlisted men, please provide the same information except that concerning rank.

The Armed Forces General Staff in San Salvador does not keep central files on military personnel disciplined for various offenses. Therefore, gathering specific information on the rank, branch of service, the circumstances of their detention and the resolution of their cases through the judicial system is an extremely arduous task. The decision as to whether these cases are tried in a military or civilian court rests entirely on the department commander. When these cases are remanded to civilian judicial authorities the task becomes even more difficult to quantify, given the 60 circuit courts in the country. The figure of 109 military personnel disciplined since January 1, 1982, referred to in the July Certification, was obtained by canvassing all the military jurisdictions in the country. A follow-up inquiry revealed that 44 cases are either under investigation or have been submitted to the courts. The remaining cases were either crimes against other military members or were minor offenses handled administratively.

13. A May 1982 cable from the Department to the Embassy in San Salvador noted that the Administration is seeking to "create" a program in El Salvador "which creates institutional incentives for the Salvadoran military to implement a meaningful human rights program..." What are the "institutional incentives" that have been created or are in the process of being created for this purpose, and what is the State Department's opinion of their effectiveness? What results, specifically, have they brought to date?

It is Department policy to refrain from commenting about publicly disclosed, classified documents. Minister of Defense Garcia has issued strong orders to end abuses of authority and to respect the rights of civilians. He has told officers that they will be held accountable for abuses committed by their subordinates. He directly warned over 240 civil defense (irregular) commanders that they and their subordinates would be punished for abuses. The International Committee of the Red Cross (ICRC) has provided human rights instruction to several thousand military personnel. Military officers are also making frequent reference to the military's code of conduct in instructing enlisted men. We believe all these efforts will continue to have a positive impact on the human rights situation.

14. Six A-37 aircraft have been sent to El Salvador. Have there been any allegations that A-37's have indiscriminately bombed or strafed civilians? If there have been any, what is the Department's evaluation of the allegations?

Pro forma allegations by the guerrillas on Radio Venceremos of indiscriminate bombing follow many military operations. Salvadoran pilots trained on the A-37 aircraft received rigorous instruction to sharpen their accuracy and to discern the difference between military and nonmilitary targets. Information from captured guerrillas indicates that the A-37's have been highly effective, especially against fortified guerrilla

positions. Although we cannot rule out the possibility that there may have been some civilian casualties, we have yet to see any evidence of indiscriminate bombing or strafing.

15. White phosphorous has been sent to El Salvador. Under what conditions was it sent? Have there been any reports that white phosphorous has been used in combat or combat situations?

White phosphorous marking rounds for spotter aircraft have been included in our security assistance package for El Salvador. Contrary to guerrilla claims, these are only used for marking guerrilla targets from the air.

APPENDIX E

ASSISTANT SECRETARY OF STATE
WASHINGTON

December 2, 1982

Dear Mr. Chairman:

In further reply to your letter of October 18, 1982 regarding the Department's July report to the Congress on the situation in El Salvador, the Embassy has provided us with some additional information relevant to your concerns.

As you know in its July certification report the Department stated that 109 members of the Salvadoran armed forces had been disciplined for various offenses, of which 56 cases have been submitted for judicial action. The Embassy advises that of these 56 individuals, some 44 were accused of human rights abuses. The remaining twelve cases involved crimes against other members of the military, or minor offenses. These twelve cases were either remanded to an investigating court or handled administratively.

According to sources in the Salvadoran military, no one of the 44 individuals involved in human rights-related cases has yet been convicted. All 44 persons remain under detention by civil authorities, however, while their cases are being investigated. In Salvador in most instances when a soldier has been accused of an offense against a civilian he has been dismissed from the military and remanded to the civil judicial system for prosecution. It is then difficult to obtain information on the individual cases because there are 60 distinct circuit courts in the country, and the Armed Forces General Staff in San Salvador does not keep central files on military personnel disciplined in civil courts. Moreover, the civil judicial process in El Salvador is woefully slow. As you will recall, Ambassador Hinton in a speech to the American Chamber of Commerce on October 28 decried the state of the Salvadoran criminal justice system. In fact some 32,000 individuals are presently being held in the Salvadoran penitentiary system, only about 400 of whom have been convicted.

The Honorable
Don Bonker, Chairman,
Subcommittee on Human Rights
and International Organizations,
House of Representatives.

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Nevertheless, the Embassy is now attempting to obtain additional information on each of the cases involving persons accused of human rights violations, including the specific charges involved. As soon as this additional information is received I will be back in touch with you.

Sincerely,

Elliott Abrams
Bureau of Human Rights and
Humanitarian Affairs

CONFIDENTIAL APPENDIX F

EXCISE

25

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 PSAT-22 21-05 21-07 PA-21 ICAL-24 SP-22 SP25-22
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1 1315192 JUL 87
 FM AMEMBASSY SAN SALVADOR
 TO SPECSTAFF WASHDC 627
 C O N F I D E N T I A L SAN SALVADOR 5799
 1. O. 12225; GDS 27/12/86 (DRISCOLL, ROBERT S) OR-P
 2255: PINS, PINS, IS
 SUBJECT: (U) PRESIDENTIAL CERTIFICATION
 REF: (A) STAFF 184475 (F) SS 5515 (C) SEVETA 7145 (I) SS 5525
 (E) SS 2347

1. (C-ENTIRE TEXT.)
 2. THE FOLLOWING REPLIES TO THE REQUEST FOR SPECIFIC INFORMATION IN PARA 3 OF REF (A). WHILE MOST OF IT IS INCLUDED IN THE EMBASSY REPORT OF THE PRESIDENTIAL CERTIFICATION, WE PROVIDE IT HERE SO THAT THE DEPARTMENT WILL HAVE IT REFULLY AT HAND.
 3. NUMBER, TYPE AND STATUS OF DISCIPLINARY ACTION INITIATED AGAINST MEMBERS OF THE ARMED FORCES SINCE JANUARY 1, 1982.
 ARMED FORCES MEMBERS RETAINED FOR MINOR OFFENSES
 ARMED FORCES MEMBERS RETAINED FOR SERIOUS OFFENSES
 SUB-TOTAL
 PINS ABSOLVED
 PINS UNDER INVESTIGATION
 PINS FUGITIVES
 CONFIDENTIAL
 CONFIDENTIAL

PAGE 02 SAV SA 25779 1321592

TOTAL DISCIPLINED
 ARRESTED FOR VIOLENT ACTS

MURDER

ASSAULT

RAPE

TOTAL

ALCOHOL RELATED ACTS

OFFICERS

COLONELS

CAPTAINS

LIEUTENANTS

SUB-LIEUTENANTS

TOTAL

TO THE BEST OF OUR KNOWLEDGE THESE ARE THE FIRST INSTANCES WHERE THE MINISTRY OF DEFENSE HAS REPORTED OFFICERS HAVE BEEN ARRESTED OR INVESTIGATED

CONFIDENTIAL

THE EMBASSY CANNOT

DEPARTMENT OF STATE A/CDC/WR
 TYPED BY 101-100 DATE 12/1/87
 AUTH: 101-100 DATE 12/1/87
 EXISTING MARKING ☐
 DECLASSIFIED ☐ RELEASED ☐
 RELEASE DESIGNATION 101-100
 PA or FOI REQUESTS 21, 25, 49

21/A9
 8/1/89
 PAGE 1

CONFIRM IT INDEPENDENTLY. THEREFORE, WE RECOMMEND THAT IT BE USED WITH PROPER CAUTION. FURTHER, WE HAVE NO INFORMATION ON FINAL DISPOSITION OF THESE CASES. SUCH CONFIRMATION REQUIRES THAT THE MINISTRY OF JUSTICE MAKE A COMPILATION OF THE DEPOSITION OF EACH INDIVIDUAL CASE AND PAGES ABOUT TWO HUNDRED. WE SHALL ADVISE THE MINISTRY TO DO

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PAGE 23

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5. THE STATUS OF SUSPECTS ARRESTED IN THE MURDER OF MAYORS IN MAY: ACCORDING TO THE NATIONAL GUARD THE ACCUSED IN THE MURDER OF THE MAYOR OF SAN FRANCISCO CHINAMECA AND HIS DAUGHTER ARE DETAINED UNDER THE ORDERS OF THE STE PENAL COURT OF SAN SALVADOR PENDING JUDICIAL INVESTIGATION. AGAIN, ACCORDING TO THE NATIONAL GUARD THE ACCUSED IN THE MURDER OF THE MAYOR OF EL PAISNAL IS DETAINED UNDER THE ORDERS OF THE JUSTICE OF PEACE IN AGUILAR, ALSO PENDING JUDICIAL INVESTIGATION.
6. THE STATUS OF SUSPECTS ARRESTED IN THE MURDER OF 14 CIVILIANS IN CUSCATLAN: THE NATIONAL POLICE ORIGINALLY ARRESTED EIGHT SUSPECTS. THREE ARE SUBSEQUENTLY RELEASED FOR LACK OF EVIDENCE. FIVE SUSPECTS, FOUR MEMBERS OF THE COAL CIVIL DEFENSE UNIT AND A TREASURY POLICEMAN, ARE HELD BEFORE THE COURT OF THE FIRST INSTANCE IN COJUTEPQUE.
7. THE PARTIAL AFFILIATION OF ATTORNEY GENERAL MARCO IVIRA IS PENDING.

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PAGE 2

Appendix G

United States Department of State

RECEIVED JAN 16 1983

Washington, D.C. 20520

January 14, 1983

Messrs. Morton H. Halperin,
Center for National Security Studies and
Aryeh Weier, Americas Watch Committee
122 Maryland Avenue, N.E.
Washington, D.C. 20002

Dear Messrs. Halperin and Weier:

I have been asked to respond to your letter of October 29, 1982 to Secretary Shultz expressing concern about the arrest and detention of leaders of the National Revolutionary Movement (MNR), the Revolutionary Democratic Front (FDR), and of labor leaders and members in El Salvador.

The Department of State and the United States Embassy in El Salvador are also concerned about these arrests. The Embassy made a prompt approach to the Salvadoran Government on behalf of those detained and was gratified to note that the government quickly acknowledged publicly these arrests. The guerrilla voice, Radio Venceremos, announced shortly after the arrests that the detained were FDR leaders. The FDR/MNR is a part of the guerrilla terrorist opposition which has caused numerous civilian deaths and substantial damage to the civil economy.

An embassy officer has visited all the detained persons at Mariona Prison. They appeared in good health and did not indicate that they had been mistreated. They are also allowed visits by the International Red Cross and have been visited by family members. Our Embassy will continue to follow these matters closely.

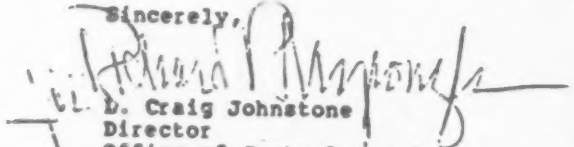
I believe that the long term solution to the human rights abuses and other social ills affecting El Salvador rests on the success of the Magana government's current efforts. This Government of National Unity, created by the elections of March 1982, has checked the political polarization, which has plagued the country for years, and is laying a basis for a democratic, pluralistic government, based on broad consensus. The political legitimacy of this government and the close working relationship between President Magana and high-ranking members of the military are gradually overcoming the years of distrust and distance between military and civilian political leaders. The Political Commission, created by the multi-party Pact of Apaneca has scheduled municipal and presidential elections no later than 28 March 1984. The Constituent Assembly has appointed and confirmed an independent Central Elections

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Commission to oversee these elections. The President is expected soon to announce a Peace Commission which will begin work on reviewing amnesty, dialogue proposals, and general reconciliation. A new draft amnesty law continues under consideration within the Constituent Assembly.

For your use I have enclosed two detailed reports showing the current status of the detained persons. Updated reports will be forwarded to you. When it is publicly released, I will also send you a copy of the report to the United States Congress on the situation in El Salvador which is now being prepared.

Sincerely,


D. Craig Johnstone
Director
Office of Central America
and Panamanian Affairs

Enclosures:

1. Detention of FDR/MNR Leaders
2. Union Leaders/Members

SUBJECT: Detention of FDR/MNR Leaders

The following provides the status of various individuals listed as detained in Mariona Prison in El Salvador, as reported by the U.S. Embassy in San Salvador.

-- David Elias Guadron:

According to the November 10, 1982 edition of La Prensa Grafica, a San Salvador newspaper, the Armed Services press committee reported this man's complete name as David Elias Guadron Valencia. He is being held at Mariona Prison by order of a Military Court under decree 507 pending further investigation. His release or continued detention will depend on El Salvador's justice system. He was seen by an embassy officer on November 18, 1982 and appears to be in good health and spirits.

-- Jorge Herrera Martinez:

He is also known as Jorge Alberto Martinez and Raul Murillo. The November 10th edition of La Prensa Grafica had details of this man's arrest. The Armed Forces Press Committee stated that he is detained at Mariona Prison by court order following his arrest by the security forces. He was seen by an embassy officer at Mariona on November 18, 1982. He appears to be in good health and spirits.

-- Carlos Alberto Molina Osegueda:

An embassy officer saw him at Mariona Prison on November 16th. The armed forces acknowledged in the November 10th edition of La Prensa Grafica that they detained him.

-- Mauricio Antonio Doncnech Velas:

The Minister of Defense notified the embassy in a letter dated November 10, 1982 that this man was detained by the security forces and remanded by court to prison.

-- Luis Antonio Henjivar Rivera:

The armed forces acknowledged in the November 10th edition of La Prensa Grafica that this man was detained and sent to prison by court order. He is also known as Roberto Arguello and Roberto Mena.

-- Victor Manuel Jovel:

The armed forces acknowledged that this man was detained by the security forces in the November 10th edition of La Prensa Grafica. He is in Mariona Prison.

- 2 -

-- Julio Cesar Savaria Avalos:

In the November 10th edition of La Prensa Grafica, the armed forces acknowledged that this man had been detained. According to the notice, he was remanded by the courts to Mariona Prison, where he was seen by an embassy officer on November 18, 1982. He was accidentally burned on the right elbow and right hip at the time of his arrest. He informed the embassy officer that his burns were clearly accidental, not the result of intentional mistreatment, and that he is receiving adequate medical treatment.

Mariona Prison, which has been visited by embassy officers several times, is a good prison by Latin American standards. The physical and moral integrity of anyone remanded to Mariona seems to be as assured as is possible in a prison facility.

The Embassy notified the next of kin of each person seen by the embassy officer at Mariona on November 18, 1982.

The following individual is being held at the women's prison at Ilopango.

-- Berta Alicia Cosme Escoto:

The armed forces announced her arrest in the November 10th edition of La Prensa Grafica. She was seen by an embassy officer on November 22; she appears to be in good health.

The Department of State is encouraged by the public disclosure by the Government of El Salvador that the individuals in custody will be tried. The military investigative judge has 180 days to investigate the case before he must turn the prisoners over to the "military court of first instance" for trial. Our embassy will continue to report on the condition of the detainees, and will closely follow the legal proceedings against them.

SUBJECT: Detention of Union Leaders/Members

The following provides an update on the status of trade union leaders and members reported detained by security forces.

-- Alejandro Martinez:

An embassy officer spoke with labor leaders on October 29, 1982. They stated that Alejandro Martinez had been detained at Mariona Prison by the security forces. According to the August 19th edition of La Prensa Grafica, a San Salvador newspaper, Martinez was sent to prison on a court order, and will be detained there pending further investigation. The embassy will make a written inquiry concerning this person.

-- Marta Imelda Dimas:

Labor leaders informed embassy officer on October 20, 1982, that Marta Imelda Dimas, a secretary for the union, is being held at Ilopango Women's Prison. La Prensa Grafica of August 19th confirmed that she was sent to Ilopango by the court. She is being held for further investigation by the authorities. The embassy will make a written inquiry concerning this person.

-- Daniel Avalos:

This man's complete name is Daniel Avalos de Paz. A paid announcement appeared in the October 28th edition of El Mundo, a Salvadorian newspaper that alleged he was detained or disappeared sometime during the afternoon of October 10. We have no other information. The embassy will make a written inquiry concerning this person.

-- Pedro Ramirez:

Complete name is Pedro Ramirez Esquivel. A paid announcement appeared in the October 28th edition of El Mundo which alleged he had been detained or disappeared on October 9, 1982, at about 7:30 a.m. He was described as one of the directors of the Mechanical Industry and Basic Metal Workers Union (STIMMB). We have no further details. The embassy will make a written inquiry concerning this person.

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-- Pablo Ramirez Cornejo:

According to a paid announcement in the October 28th edition of El Mundo, this man was arrested or disappeared on October 10, 1982 somewhere in the La Fortuna section of Apopa, El Salvador. We have no further information. The embassy will make a written inquiry concerning this person.

-- Julio Roberto Rosales:

The Embassy has no information regarding this man, but will make a written inquiry concerning this individual.

-- Raul Palomares:

His is a member of the Salvadoran Sugar Refinery Workers Union. His alleged arrest was protested in several paid newspaper announcements in El Salvador. The embassy has no other information. The embassy will make a written inquiry concerning him.

-- Silvestre Ortiz:

His complete name is Silvestre Ortiz Hernandez. He is the finance secretary of the Salvadoran Sugar Refinery Workers Union. We have no other information regarding him. The embassy will make inquiry concerning this person.

Additionally, according to the August 19, 1982 edition of La Prensa Grafica, the following union members were arrested and later released:

- Maximiliano Castro Navas
- Gabriel Argueta
- Hector Lopez Rivas
- Jorge Rodriguez Duenas

The CHAIRMAN. Thank you very much, Mr. Schell. Not only a fine statement, but staying right on time.

Dr. John Stanbury, the committee on health rights in El Salvador at MIT in Cambridge.

STATEMENT OF DR. JOHN STANBURY, COMMITTEE ON HUMAN RIGHTS IN EL SALVADOR, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CAMBRIDGE, MASS.

Dr. STANBURY. Thank you very much, Senator Percy. It is a pleasure to be here.

I represent the New York-based committee on human rights in El Salvador. We traveled to El Salvador a couple of weeks ago. There were seven of us in the Commission. Two of us were internists. One was a psychiatrist. One was a surgeon. One was a nurse who is deputy commissioner for nurses for the State of Massachusetts, and another was a teacher in biomedical technology in New York, another was a medical student who is president this year of the American Medical Students Association.

I would like to describe only part of what we did because Dr. Gellhorn will pick up some of the things which we also saw and describe them for you in a moment.

We traveled first to Mexico, where we spent a day and a half talking to people living in exile there. These were primarily health professionals, physicians, teachers, and also some who were there because they had fled because family members had been killed. Medical students were among the groups. We interviewed about 20 persons in Mexico City.

We had a chance to hear their views from the side of the guerrilla movement, to try to understand why they left San Salvador, and what their hopes might be for the future of the health care system in that country.

From there, we went on to San Salvador, where we had 3½ days, visited many institutions, talked to many people in the church, in the government, with Ambassador Hinton and many others. We had an opportunity to visit a refugee camp and prisons.

I would like to limit my remarks to two points. One is a description of the health care system as we saw it, and another, a description of the health problems in one of the refugee camps.

The health care system is in an extraordinary state of disarray. We went first to a military hospital. There, we found the wards were clean and neat and the patients seemed to be well attended. The wards themselves were filled with young men suffering wounds, amputations, lacerations, and so on.

They do have a blood bank and they told us that on occasion, under a great deal of pressure, they will provide blood to the civilian hospitals. We inquired where the blood comes from. It comes from recruiting from the military personnel, so that they can get as much blood as they want by asking for volunteers from the service personnel.

We then went over to the principal city hospital, the Hospital Rosalís. This is an old style pavilion type hospital dating from about the turn of the century. We visited the laboratory, which also in its contemporary competence comes from about 1910. There were almost no

equipment and very little activity. There appeared to be almost no support for patient care available in the laboratory. There is no blood bank.

We went to the pharmacy. The pharmacy has only a few drugs, and is particularly shy in antibiotics and in anesthetic agents. They do not have the money to buy these things. They do not have the supplies to take care of their patients.

We were particularly impressed to pick up a senior medical student who spoke English and walked around with us, but whenever we inquired about such sensitive things as the possible intrusion into the hospital of military or paramilitary people, he asked us please not to bring up such delicate subjects, that he was fearful of talking about such things.

There is a library in this large hospital, but access to it is only for the senior staff. The students in training and the younger staff do not have access to it, and we were told that there are only a few volumes present.

We then went across the street to the large maternity hospital, it was full of patients, sometimes two or three in labor in a bed. Access to the hospital is by fee, and only in exceptional circumstances is a patient admitted who cannot pay the rather small admission fee. The ward for neonates does have a half a dozen or so incubators, but most of these were in disrepair, and all of them were of outmoded model.

We then had an opportunity to visit a clinic in town, and a clinic just on the edge of town. The first clinic was very busy. There was a lot of activity. They did have some physicians in attendance. The physicians frequently will write prescriptions for patients, but the patients are usually not able to get them filled because of the exorbitant cost of medicinals in the country.

In the clinic on the edge of town, in really quite a rural area, the wall of the clinic was pockmarked with bullet holes, and we were told that it was quite frequent for the military to come and investigate the patients, but they could not give us a recent incident of an abduction of a patient from the clinic. They also described a lack of laboratory resources and the great shortage in drugs.

I would like then to turn to a brief description of the Santa Tecla refugee camp, which is about 2 miles from the very center of San Salvador. There we found approximately 1,500 refugees from contested areas. About 500 had arrived only within the past couple of weeks. They are confined to an area of about 2 or 3 acres, in conditions which can only be described as subhuman. They live in shacks, under corrugated tin roofs or under tarps.

We were interested in their food supply. About once a week, a truck arrives from the Interministerial Agency for Refugees, and brings some corn and some beans, and that is about all. In spite of the fact that from USAID we learned that milk, soy flour and cooking oil and milled corn are distributed, we found no evidence of any comestibles except unmilled corn and beans.

We had an opportunity to look with some care at about 80 children to assess their nutritional state, and it was really quite remarkable. All of these children, with virtually no exception, are malnourished by any standard. They are short in stature, which indicates chronic malnutrition. They were skin and bones, many of them. They were infested

with parasites. Many were clinically obviously anemic. They were all apathetic, which is also indicative of severe malnutrition. There were almost no adult males in the camp.

My time is up. I would just like to say that our mission to San Salvador was to look into health rights. We thought this was simplistic and easy. Instead, what we found was total degradation of the health care system, and we were left with the question of what are health rights anyway when one finds that the future generation is being subjected to the kind of deprivation that we observed in the refugee camp.

The CHAIRMAN. Dr. Stanbury, thank you very much. Your full text will be included in the record. I would strongly recommend anyone read this.

Mr. STANBURY. Excuse me, sir, there will be a more complete record coming along shortly.

[Dr. Stanbury's prepared statement follows:]

PREPARED STATEMENT OF DR. JOHN STANBURY

HUMAN RIGHTS IN EL SALVADOR, JANUARY 1983—REPORT OF THE PUBLIC HEALTH DELEGATION OF INQUIRY¹

We are a group of seven U.S. health professionals who were in El Salvador between January 15 and January 19, 1983, intending to study the disappearances of health workers and reported abuses of medical neutrality. Instead, we found that human rights infractions run so deep in that society that there is an overall debasement of human life. We observed a country where people are stripped of the basic elements essential for physical and psychological survival by a government which appears to have no other rationale than maintaining power by military force, political repression, and terror.

Our trip was organized by the New York-based Committee for Health Rights in El Salvador and was sponsored by the American Public Health Association; American Orthopsychiatric Association; National Association of Social Workers; American Medical Students Association; Committee of Interns and Residents; District Council 37 of the American Federation of State, County & Municipal Employees; Massachusetts Nurses' Association and The Physicians Forum.

Our delegation traveled to Mexico City to meet with exiled Salvadoran health professionals and then to San Salvador where we conducted on-the-spot inquiries. We met with officials at the United States Embassy, AID, the Ministry of Health, the International Red Cross and the Green Cross, representatives of relief organizations and of medical and nursing associations, the Legal Aid Office of the Archdiocese, the Human Rights Commission, the Office of the Archbishop, and the Chief of the National Police. We had a conversation with the Acting Archbishop, Rivera Y Damas.

We visited a refugee camp, several hospitals, and the Mariona and Ilopango Prisons. We made the following observations:

There is a virtually complete breakdown in the health system.—Basic equipment and medicinals are in short supply. Antibiotics and analgesics are particularly scarce. There are shortages of staff, supplies, and blood for transfusions at all hospitals. Food for patients is scarce. There is almost no diagnostic equipment.

In the Maternity Hospital, two or three women occupy the same bed; they are considered fortunate to have the money required to be admitted. Women without funds are not officially admitted, and neither are those who are ready to give birth when no bed space can be found. The largest civilian hospital in the capital lacks a medical library. In the rural areas, almost no medical services exist. While there were once 85 mobile health units operating, there are now only a handful.

The post of Minister of Health remains vacant. The former Minister who resigned in December 1982 was a member of the Armed Forces. We are aware of political in-fighting for control of ministerial posts. The Ministry of Health appears to be without power, and health is a low priority of the current government.

¹ A list of the delegates, with their primary affiliations, is attached.

Numerous health workers have been killed by military or right-wing paramilitary death squads, been imprisoned, or have left El Salvador because of the climate of terror generated by the government.—We found four medical students who are being held as political prisoners at Mariona Prison, presumably for the "crime" of having belonged to the medical student association; no formal charges have been brought against them nor are they aware of how long they will be in prison.

We spoke with a psychiatric social worker in the women's prison who had worked for 14 years at a Social Security Institute (comparable to our public hospitals) and who was part of the cultural committee of the Union of Social Security Institute Employees. While organizing a community meeting related to the improvement of health care, she was violently abducted by four armed men. She has since been held without charges. She has experienced sexual abuse, beatings, and a mock execution. We found evidence of burns to the gums, facial deformity, and deafness in the left ear.

Of the 11 physicians who formed the National Committee for the Defense of Patients, Workers and Health Institutions, eight have been killed or have disappeared since the 1980 Public Health Commission's visit to El Salvador. (See "Abuses of Medical Neutrality: Report of the Commission".) This National Committee had formed in response to armed incursions into hospitals and clinics and included individuals and organizations from all sectors of the Salvadoran health system. Further attempts at organization have been seriously curtailed in the health sector.

Francisco Zamora, head of the Green Cross, a neutral emergency humanitarian service, was captured, tortured, and interrogated at the headquarters of the National Police. Because of international pressure, he was later released. The delegation was astonished to learn that the head of the National Police, Lopez Nuila, was appointed recently as one of the members of the newly formed governmental Human Rights Commission. Many other Green Cross workers have been tortured, murdered, "disappeared," or forced into exile. For example, volunteer worker Castro Zolaro was tortured and had to leave the country in September 1982.

Those health professionals who remain on the job expressed to us their fear, bitterness, and sense of helplessness. The El Salvador Nurses Association (A.N.E.S.), an affiliate of the International Council of Nurses, was moved to make a public statement which was published in a September 1982 Salvadoran newspaper. They asked for the immediate freedom of kidnapped nurses and pleaded that those responsible respect the "physical and moral integrity" of the disappeared nurses.

We saw bullet holes in the walls of the health clinic at Plana de Pino where there have been repeated armed searches by the governmental military forces. The nuns who run this clinic had lived in a residence adjacent to the clinic but moved to safer living quarters in the community because they feared for their lives. A nun working in a clinic in San Salvador reported that she had been detained by the Treasury Police for an hour 1 month ago because she was carrying a small box of medicine. Two other health workers in that clinic have been tortured. These experiences have made it difficult to recruit health professionals and workers for this clinic. Another clinic was forced to change its location because both health workers and patients were fearful of harassment by the security forces in its former locale. The clinic's patients now have to travel several miles for appointments.

The health and sanitary conditions of refugees living in San Salvador are appalling.—Large numbers of people—primarily children, women, and the elderly—continue to seek shelter in makeshift camps run by church and voluntary humanitarian groups. In the last two weeks, 500 people entered the Santa Tecla Camp where we visited. They had lived in "contested" areas and were forced to take flight because of Air Force bombings, and the burning of their homes and fields by the Army.

We found severe malnutrition, skin diseases, pediculosis, diarrhea, and whooping cough. Scabies was almost universal. The infants and young children were lethargic and apathetic. Virtually no medical services other than inoculations were available to the residents of the refugee camps. We were surprised to find so little international concern for their plight. The government and international bodies do not recognize this population as "refugees" because their displacement has not taken them beyond their nation's borders. There has therefore been no United Nations involvement.

We witnessed the physical and psychological effects of the torture of political prisoners.—We saw evidence of recent chemical burns, and of ear and tongue lacerations. One man had avulsed fingernails on both hands with the end of the thumb abraded by tears from a nylon rope used in torture. Another male prisoner required surgical castration after beatings in the genital area. We were told of beatings, burnings by chemicals or hot metal bars, electric shock, blindfolding for over 20 days, mock executions, sexual abuse, prolonged interrogation, and other forms of psychological abuse. The prisoners also reported that some of their families had been killed, abducted, or threatened after visiting them in prison. We observed that the driver of our vehicle was closely questioned by the military authorities during the time we were at the prisons.

No obstetrician or pediatrician visited the prison for women despite the fact that children are born to incarcerated expectant mothers, and the babies remain with their mothers. A dentist visits the prisons but there is no dental equipment for him to work with so that only extractions can be performed. Only a few medications are available to the two doctors who attend the female prisoners a few hours per week. No conjugal visits are permitted at the prison for females but they are permitted at the prison for males.

We were told repeatedly by women political prisoners of a pattern of capture and torture that included: (1) sudden, violent capture; (2) immediate blindfolding; (3) being left for long periods of time in cold, dirty spaces without food, deprived of sleep; and (4) being subjected to mock executions, sexual abuse, electrical shock, and beatings. We saw physical evidence of these beatings.

These kinds of torture and sexual abuse—including being raped repeatedly—occurred at the time of arrest in the Army Barracks of San Carlos, as well as in the headquarters of the National Police.

One woman prisoner told us the following: "I was with a group of women who were tortured and told that we were going to be killed. I was taken into a cold, dark room and beaten. When they brought me out, I could hardly stand up. The police then told me they were going to kill me. For 3 days, I was deprived of food and water, and made to stand up all the time. Then, I was beaten again by a group of six men so badly that my nose and ribs were broken . . . during the beating my mouth was filled with pages from a telephone book."

It was reported to us by women political prisoners that when representatives of the International Red Cross came to look for prisoners at the National Police headquarters, the women were hidden in another room.

The children and youth of El Salvador are suffering a terrible toll from the militarization of the society in which they are trying to grow up.—We already noted that the refugee population is predominantly children. The director of one of the refugee camps informed us that he dare not care for children beyond the age of 10 years because older children are forcibly taken from the camps by the Salvadoran Army for induction into the military. We were impressed by the young age of soldiers in the military hospital.

Although the law prohibits the imprisonment of those younger than 16 years, we observed prisoners as young as 13 and 14 years at Mariona Prison. The officer in charge of that prison confirmed their age.

During our stay in San Salvador, an adolescent boy was abducted from a full movie theatre at 6 p.m. while watching "E.T." Uniformed men, according to our informant, shone flashlights on the faces of those in the audience until they singled out this boy who was removed from the theatre in terror.

The health statistics we obtained from rural health workers were devastating: out of 1,000 children born in El Salvador, 180 die within the first year of life. In some rural areas, infant mortality approaches two out of three children. Forty percent of children are born with body weights less than 2.5 kilos or 5.5 pounds. One-third of the population is clinically anemic and 80 percent of children under 5 years of age suffer from malnutrition.

The family unit is in total disarray, particularly in the refugee camps. Many of the children are orphaned and virtually none have fathers who are present.

In summary, human rights are predicated upon physical and psychological integrity. This integrity is impossible to maintain in a society which is disintegrating under the pressures of political repression, economic adversity, and civil war. The simple fact of the matter is that the delivery of health care is dependent upon social organization, and that any kind of social organizing is considered subversive by the Government of El Salvador. Social organizing is dealt with by terror and assassination. The effects are calamitous for the health and well-being of the people of El Salvador.

In conclusion, since the system of health care delivery is in collapse, political terror is unabated, and the institutions of repression, torture, and assassination remain unchanged, we believe that recertification should be denied.

1983 PUBLIC HEALTH COMMISSION

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David Halperin, M.D., President of the medical staff of Kennebec Valley Medical Center; surgeon in group practice; chairman of Physicians for Social Responsibility of Central Maine.

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REPORT ON THE STATUS OF HEALTH RIGHTS IN EL SALVADOR IN JANUARY 1983*

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The people of El Salvador are engaged in a civil conflict. From before 1980 there have been many charges of violations of human rights as codified in the Statutes of the Inter-American Commission on Human Rights,¹ and other international statutes to which the Government of El Salvador (GOES) is signatory.² In July of 1980 a delegation representing the New York-based Public Health Commission of the Committee for Health Rights in El Salvador visited that country and reported its findings.³ That report described a systematic and institutionalized violence against persons in the health sector and abuses of the neutrality of health institutions which were in clear violation of internationally accepted standards of conduct.

The Government of the United States has supported the GOES with increasingly large supplies of military equipment and to a degree with humanitarian services. These are supplied on a government to government basis. The Congress since the beginning of 1982 has required that the President certify semi-annually that progress has been made by the GOES in several domains, one of which is that of human rights, if military assistance is to continue to flow from the United States to El Salvador. Progress in land reform and government control of the military are other considerations in the Presidential recertification process.

*The trip was sponsored by the American Public Health Association; American Orthopsychiatric Association, National Association of Social Workers, American Medical Students Association, Committee of Interns and Residents, District Council 37 of the American Federation of State, County and Municipal Employees, Massachusetts Nurses' Association, and the Physicians forum. This document does not necessarily reflect any official views of those organizations.

¹ Organization of American States Doc. OEA. Ser. I.V.II.26, Doc. 10, at 1-6, (1971).

² Sohn, L. B. and Buergenthal T.: Basic Documents on International Protection of Human Rights. Bobbs-Merrill, 1973.

³ Report of the Public Health Commission to El Salvador, July 1980. Abuses of Medical Neutrality. Int. J. Health Sciences, 11, 329, 1981.

The Committee on Health Rights in El Salvador sent a second delegation in January 1983 to make an independent assessment of human rights in the health sector, make comparisons with its earlier findings, and determine whether its 1980 recommendations had been put into effect. The delegation spent January 13 and 14 in Mexico City interviewing exiled El Salvadoran physicians, academicians, and students as well as family members of persons who had been detained, killed or who had disappeared. It then spent January 15 through 18 in San Salvador. The delegation interviewed acting Archbishop Rivera y Damas, the Commission on Human Rights of the GOES, the Committee on Human Rights of the Archbishop (Tutela Legal del Arbisopado, Comision Arquidiocesana de Justicia y Paz), U.S. Ambassador Dean Hinton and political members of his staff, senior members of the U.S. Agency for International Development mission, several senior members of GOES including the attorney general, the acting minister of Health and his senior staff, the governmental Human Rights Commission, a number of physicians, representatives of the Salvadoran Nurses Association, a group from a Lutheran organization, who maintain refugees near the contested areas, the International Red Cross, the Green Cross and others. Visits were made to the political prisons for men and women, to several hospitals and clinics and to the Santa Tecla refugee camp not far from the center of the city.

The initial intent of the delegation was to investigate alleged infractions of certain clearly defined health rights, such as "disappearance" of health workers, use of the blood bank along political alignments, and abuses of medical neutrality including forceful removal of patients from health care institutions by the military. Instead, the delegation found that human rights infractions run so deeply in that society that life itself is debased and distinctions between health, economic, political, and social rights no longer have meaning.

Here we report our observations and impressions under a series of rubrics which constitute the elements of the rights to health in any humanistic society. Some of these rights are formally stated in various international agreements, while others are implicit in those documents. Still others impress us as intuitively valid and we have therefore given them explicit statement in this document.

I. THE RIGHT TO EXIST AS A PERSON

"Every human being has the right to life, liberty and the security of his person." American declaration of the Rights and Duties of Man. Resolution XXX, Article 1. Adopted Bogota, Colombia, 1948.⁴ GOES signatory. Also Art. 3. The Universal Declaration of Human Rights and the Covenants on Human Rights. U.N. General Assembly Dec. 10, 1948. "Every person has the right to have his life respected . . . no one shall be arbitrarily deprived of his life". Article 4.1, American Convention on Human Rights, San Jose, 22 March 1969. GOES signatory.

Violence has become the leading cause of death in El Salvador. A tide of executions and of disappeared persons who are presumed dead by violence began before 1979 and has continued. Ample photographic evidence of death and mutilation has been available in the public press and from private sources. Testimony from all sides indicates that these have occurred at the hands of the Salvadoran Army and paramilitary groups, such as the National Police (metropolitan areas), Treasury Police (rural areas), the outlawed but allegedly still functioning and much feared organization known as ORDEN, the White Hand, and others. It is widely known that these organizations are in reality part of the army system. We found no evidence that there has been any attempt on the part of GOES to curb this violence or to apprehend or prosecute those responsible for abductions and killings of doctors, nurses or medical students.

The more obvious terrorist tactic of leaving hideously mutilated corpses by the roadside appears to have abated, but whether there has been a real decline in deaths by violence or disappearance is uncertain. More of the killing may be taking place in more remote areas and hence reported less often. Numbers supplied by the U.S. Department of State indicate an appreciable decline over the past 2 years, with a slowing of the rate of decline during the past 6 months, but the numbers supplied by the Office of Human Rights of the Archdiocese indicate a less significant change. It is our understanding that the statistics of the U.S. Embassy are compiled from the government controlled press of El Salvador. We

⁴ American Declaration of the Rights and Duties of Men. Resolution XXX, adopted by the Ninth International Conference of American States, held at Bogota, Colombia, 30 March-2 May, 1948. Pan American Union, Final Act of the Ninth Conference of American States 38-45, Washington, D.C., 1948.

were informed that those from the Archdiocesan Office are compiled also from the press, but in addition from complaints filed with that office, and that each incident is individually investigated and documented insofar as possible, with photographic evidence if available. Evidence is compiled from visits to and conversations with friends and relatives. The U.S. Department of State lists 1,669 civilian deaths due to violence for the first half of 1982, and 961 for the second half. The corresponding figures from the Office of Human Rights of the Archbishop are 2,976 and 2,055. All are agreed that there is underreporting, and that there might be some duplication in reports. Wide fluctuations from month to month make it difficult to discern any important trends within the past 6 months or more. There is no disagreement that a high level of violence continues. A social worker described to us the removal of a terrified young male from his seat near her at a cinema only a few days before. Members of the armed forces entered the darkened theater and passed along the rows with flashlights until this person was found.

There is another dimension to the right to survival which is even more difficult to measure. This is the abridgement of life which is a consequence of the war and of the policies which are pursued in the conduct of the war. El Salvador has a long history of one of the highest rates of infant and childhood mortality and malnutrition of any country in Latin America.^{5, 6} The disruptions of the war, the killing and displacement of many farm workers, the destruction of crops and croplands—the scorched earth policy attributed to both sides—and the abandonment of farms, have all contributed to deteriorating nutrition and an attendant rise in disease rates. Malaria teams are unable to perform their function, and the incidence of malaria is rising. One may anticipate that with some certainty that the childhood population will become increasingly vulnerable to the lethal effects of the common communicable diseases as malnutrition worsens. Indeed these effects of the war are probably taking a higher toll of human life than the direct killings.

II. THE RIGHT TO FREEDOM FROM TORTURE

"No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment."⁷ American Commission on Human Rights, San Jose, March 22, 1969. GOES signatory. Universal Declaration of Human Rights, Resolution 217A (III) of the General Assembly, Dec. 10, 1948, Article 5. Resolutions A.810, at 71-77. United Nations.

Physical and psychological torture have been alleged to be routinely practiced by the armed and paramilitary forces of the GOES. Persons apprehended are removed to detention centers for various periods of time and then remanded to prison. Political prisoners sleep in separate barracks from criminal prisoners, but mix during the day. It is primarily in the centers of detention that torture is said to take place. Since these centers are moved secretly from place to place it is impossible for any inspecting agency to scrutinize them for detainees or for instruments of torture.

The delegation was able to talk at length with many political prisoners both in Mariona Prison for men (approximately 700 political prisoners), and in Ilopango (approximately 80 political prisoners) Prison for women. We talked with tradesmen, artisans, teachers, social workers, medical students and many others. Every prisoner with whom we talked gave testimony of torture prior to being transferred to the prison. All told of being blindfolded for days to weeks, of being forced to stand for days, of beatings, and of electric shock and mock executions. The women uniformly described sexual abuse and often repetitive rape. One woman, a social worker, had lost hearing in one ear as a result of local electric shock, and had also lost teeth as a result of a blow to the mouth. In the prison for men we observed one person with long, linear, jagged healed scars on back, chest and arms attributed to acid burns. On another there was a large unhealed ulcerated area said to be the result of application of hot metal. Many had healed puncture wounds. One had recently avulsed thumb nails. One had lost his testicles as the result of a blow. Rope burns were frequent.

⁵ Instituto de Nutricion de Centro America y Panama. Evaluacion Nutricional de la Poblacion de Centro America y Panama: El Salvador, Guatemala City. INCAP 1969.

⁶ Ruiz, A., Askin, P. W., and Gibb, D. C.: Health Sector Assessment: El Salvador, U.S. Agency for International Development, Department of State, May 1978.

⁷ American Convention on Human Rights. The Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, November 22, 1969. OAS Official Records, OEA. Ser. A.16.

Torture does not appear to have slowed. The officer in charge of the men's prison told the delegation that the rate of admissions had been steadily increasing, and this was confirmed by the prisoners with whom we talked. All, new and old, described torture. Most distressing was to find boys of 13 and 14, and young girls of the same age in the prisons. A dwarfed person and a mentally defective young male were observed in the Mariona prison, and a woman who appeared to be hallucinating and who was considered by her prison mates to be mentally ill was encountered in the women's prison. The urbane chief of police Col. Lopez Nuela, told us that his police do not practice torture. Two hours later, we were told by an inmate in the woman's prison (who did not know that we had seen Colonel Nuela) that just 2 weeks earlier she had been intensively interrogated by Colonel Nuela. He had threatened that if she did not talk he would turn her over to his people who would make her talk. He then gave her over to guards who proceeded to torture her.

A subtle and damaging form of psychological torture is detention without formal charges, without counsel, without trial and without knowledge of when, if ever, release might occur (cf. The Americas Convention on Human Rights Article 7.4; "anyone who has been detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him", other related articles are 7.5, 7.6 and article 8). A particularly vicious form of torture is to be informed, rightly or wrongly, that a family member or recent visitor has disappeared or been killed. The almost total abridgement of elementary medical care is another indirect but unacceptable form of torture.

III. THE RIGHT TO NORMAL PSYCHOLOGIC, PHYSICAL AND INTELLECTUAL DEVELOPMENT

"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Universal Declaration of Human Rights. Resolution (III) of the General Assembly, Dec. 1, 1948, Article 16(2) (Resolutions A.810) at 71077. United Nations. Article 25. (1). "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care. . . . Ibid., Article 25.1. "The child shall enjoy special protection . . . to enable him to develop physically, mentally, morally, spiritually and socially . . . in conditions of freedom and dignity". Declaration of the rights of a child. General Assembly of the United Nations. Principal 2. November 20, 1959.

The poor of El Salvador have been impoverished and nutritionally deprived for years. The current crisis has served to deepen impoverishment as nutrition has deteriorated, the educational system has been disrupted, and family structure has been disrupted.

The delegation spent several hours at the Santa Tecla refugee center where approximately 1,500 displaced persons were found. This camp is approximately 5 km from the center of San Salvador and is only one of many throughout the country. There are approximately 500,000 or more displaced persons out of a total population of just under 5 million. Some of the refugees found at Santa Tecla had been present for a year and a half, while approximately 500 had arrived by foot within recent days from contested areas. Almost all of the refugees were young children, women or old men. They exist in conditions of extraordinary deprivation; housing consists of corrugated tin roofs, tarpaulins or sheds.

Approximately once each week a truck arrives from an interministerial agency for refugees called CONADES which leaves a supply of unmilled corn and beans. No evidence of soy flour, milk or cooking oil, described in the U.S. AID summary of humanitarian assistance, was found. A member of the Green Cross was present, the only person who seemed to have any official status. He was giving some vaccinations but had virtually no medications and was not a trained health worker. There was no evidence of any educational effort for the children. As refugees the people of the camp are suspect and dare not venture beyond the confines of the camp for fear of the army. They are therefore unable to obtain outside medical care.

Health conditions in the camp were deplorable. Water was available from a single source. Sanitary facilities were shallow trenches. We were unable to identify any medical resource for the people. We had an opportunity to examine briefly about 80 children. The sample was biased because many were too ill to join the group on whom we were obtaining anthropometric and other data. As of this writing our data are not yet analyzed, but spot checks of random sets indicate severe chronic and acute malnutrition. Most of the children had the

dry rough hyperkeratosis typical of vitamin A deficiency, a deficiency state which has long been recognized as widespread in San Salvador. Most had scabies and lice. Some had the edema and changed hair color indicative of kwashiorkor (a protein deficiency state). Many children appeared to be severely anaemic. Thus we found evidence of deficiency of protein, calories, vitamin A, iron, and of parasitism. One can only conjecture what a formal health survey might have disclosed.

If the conditions in the Santa Tecla refugee camp can be extrapolated to other refugee camps in the city and throughout the country, then a large fraction of the children of the country face a future which is compromised by impaired physical and intellectual development, lack of the advantages of the socialization of families, and an absence of parental role models. Members of the delegation were profoundly concerned that the GOES appeared to have so little interest in the state of those who form the future of the country. If indeed a child has a right to normal psychological, physical and intellectual development, then this right has been violated for thousands in El Salvador.

IV. THE RIGHT TO MINIMAL NUTRITIONAL NEEDS

"Every person has the right to the preservation of his health through sanitary and social measures relating to food . . .". Ibid, article XI.

No society can flourish unless minimal nutritional requirements are met. Abundant evidence attests to the importance of adequate nutrition for infants and children in order that they develop normally. Nutritional surveys done over the past two decades in El Salvador document the nutritional inadequacies. Evidence from our examinations in the refugee camp suggest that a bad situation has been severely aggravated by the current conflict, and that the measures which are being taken to remedy the situation by the GOES are far below those which could have an appreciable impact.

V. THE RIGHT OF HEALTH WORKERS TO TEACH AND TO LEARN

All health workers know that provision of medical care requires a continuing process of learning. All health workers by precept and by example engage in teaching students and fellow health workers the art and science of healing.

The right of health workers to teach and to learn has been severely compromised in El Salvador. There is abundant testimony to the intimidation, detention, and murder of health care workers. Many of the finest teachers, physicians and students have fled the country under threat or because they felt that they could no longer practice their skills within the country. The delegation met with a number of dedicated, highly trained and intelligent physicians living in exile in Mexico City. Some of these are emigrating to Canada, the United States and elsewhere. All indicated their wish to return to El Salvador as soon as conditions might permit. The physicians whom we met were teachers of medicine or administrators within the health sector. El Salvador cannot afford to lose these professionals, some of whom have had extensive training in some of the best institutions in the United States. Even before the present conflict there was a severe shortage of health care workers at all levels in the cities, and especially in the rural areas.

The teaching of medicine in El Salvador was destroyed by the military take over and destruction of the national university on June 28, 1980. We saw the gutted buildings, the weed filled paths and the helmeted and armed soldiers guarding the university.

There has been an attempt to reconstitute the medical school by a group of dedicated physicians. A suite of business offices has been made available where didactic lectures are given; there are no laboratory facilities whatever. We were unable to obtain any evidence of reconstitution of institutions for the training of nurses and other allied health professionals. Two other medical schools have been established recently. The information furnished was that they are just beginning, and that they have no library or laboratory facilities and charge high tuition fees. An interesting aspect of medical accreditation in El Salvador is that the Ministry of Health certifies the adequacy of the school and graduation from the school is sufficient evidence of competence. No final certification examination is required for graduates to practice.

With the destruction of the institutions of health education in the country, with the killing and disappearance of many health workers and the voluntary or

involuntary exile of many others, who were leaders in the health services and medical education, and with the threats to life of those who have attempted to organize themselves to improve the health care system of the country, the processes of teaching and of learning in the health professions have been largely destroyed. The right to teach and to learn has been violated.

VI. THE RIGHT TO NEUTRALITY IN RENDERING AND RECEIVING MEDICAL CARE

The convention. . . . "grants special protection from attack to civilian hospitals marked with the Red Cross sign, as well as to transport of sick and injured".*

A right recognized by all nations is that the health care worker and the patient under his or her care are accorded neutrality in a country engaged in armed conflict*. There are many reports extending over the past several years of gross violations of medical neutrality. Patients have been seized and shot in operating theaters or forcibly removed from hospital beds. Physicians and other health workers have been intimidated while caring for the wounded and sick.

The delegation developed relatively little evidence in this sphere, possibly because of limitations of time, limitations of access to health delivery systems in the countryside and reluctance of physicians in hospitals in San Salvador to discuss such issues. At the clinic Plan de Pino on the very edge of San Salvador we observed pockmarks from bullets in the walls of the clinic building, and were told of recent forcible removal of some maintenance people from the facility. We were also told that the clinic is frequently searched by the military for possible "subversives" or "guerrillas" in the hospital beds. There was no report of any such person having been removed in recent times.

VII. THE RIGHT TO DISPENSE MEDICAL CARE WITHOUT FEAR OF REPRISAL

The health worker cannot carry out his task of caring for the sick unless he is assured of freedom from reprisal and fear. The delegation found a pervasive atmosphere of apprehension and fear among several attending physicians with whom we talked in the hospitals of San Salvador. Of the 11 physicians who formed the National Committee for the Defense of Patients, Workers and Health Institutions, eight have been killed or have disappeared since the 1980 visit of the Committee on Human Rights in El Salvador. This National Committee had formed in response to armed incursions into hospitals and clinics and included individuals and organizations from all sectors of the Salvadoran health system. Further attempts at organization have been seriously curtailed in the health sector. The physicians whom we met in Mexico City as exiles also attested to a climate of fear accentuated from time to time by death threats. At the same time the delegation was impressed with the incredible dedication of some of those who continued to practice their profession in the face of overwhelming need for their services and danger to their lives.

VIII. THE RIGHT TO RECEIVE MEDICAL CARE WITHOUT FEAR OF REPRISALS

The evidence which the delegation developed on this point is indirect and anecdotal. We were told that persons with wounds do not seek hospital care because of the fear that they might be suspected of belonging to the guerrilla movement. Clandestine clinics are said to exist for their care.

IX. THE RIGHT TO REASONABLE AND EQUITABLE HEALTH CARE

This rubric calls for a description of the medical care we observed in the military hospital, the general city hospital (the Hospital Rosales), the maternity hospital, and in two clinics. Of these the military hospital was clearly the best equipped. Some of its nurses nevertheless described severe shortages of drugs, especially antibiotics. The hospital runs a busy blood bank. The bank obtains blood from "volunteer" members of the armed services, but occasionally under circumstances of dire need units of blood may be transferred to one of the other hospitals in the city. One nurse from this hospital confided that her two children were in New York because of fear for their safety.

Members of the armed services as well as members of their families are cared for in the military hospital. The male ward which we visited was crowded with wounded recuperating soldiers. They estimated an average admission rate of

* The Geneva Conventions of the International Red Cross, 1948 Conventions. (1) Convention on the Protection of Civilians in Wartime. International Red Cross Conference in Stockholm, August 23-31, 1948.

twenty per day. We saw very young soldiers with amputations, eye and other conditions there were much the same as in the Rosales Hospital although the building itself is newer.

SUMMARY STATEMENT ON HEALTH RIGHTS IN EL SALVADOR

The delegation soon discovered that "health rights" are far more than a set of simplistic concepts. Rather, they are part of the fabric of the social order. Economic, social and cultural forces directly impinge on health and health care delivery. The delegation therefore found its mission much more complicated, and more difficult than it had envisioned.

The most compelling fact which emerged from our investigation is that the health needs of San Salvador are enormous. They are not entirely new, but they have doubtless been much exacerbated by the current conflict. If the basic rights of health are to be restored, order must return to the country. Persons of responsibility and vision must come forward to guide the country and massive help must be supplied by the developed countries if disaster is to be avoided.

We are convinced that there have been extensive and gross violations of elemental health rights are continuing. The basic right to existence continues to be violated. The apparent modest recent decline in numbers of those murdered and disappeared is no justification for a government which has failed by any reasonable standard to halt its crimes. We are convinced that until the present moment, abduction, torture and murder continue as systematic violations of human rights. The health system has undergone a series of profound assaults which has left it a shambles. Many of the most brilliant and educated members of the health profession have fled the country. Others have been intimidated, seized, and have disappeared or been killed. A sense of fear grips those giving medical care in hospitals and clinics. The system of medical education which would ensure a reasonable standard of health care in the future is in disarray. Most distressing of all perhaps, in terms of present misery and the future of the country is the aspect of the refugee camps where the young of the country are being deprived of their rights to health and development. We are convinced that a responsible government, even in the face of an insurgency such as exists, could do far more to remedy the degradation of life which is so abundantly evident in these camps.

CONCLUSIONS

1. The delegation on health rights in El Salvador in mid-January of 1983 found abundant evidence of continuing violation of basic health rights.

2. Politically motivated killing, detention and disappearances continue, perhaps on an unabated scale.

3. Evidence of physical torture of recent origin can be found. The psychological torture of continued detention without charge and without knowledge of time of release from detention continues and indeed is increasing.

4. Systems of medical education and medical care are in disarray. Instruction in the health sciences by acceptable standards has virtually disappeared. Many of the country's leading health professionals have disappeared or have left the country.

5. The right to health care has been violated by a systematic disruption and intimidation of the health care institutions and personnel.

6. Subhuman conditions are permitted in refugee camps where reside large numbers of the country's future citizens. There appears to be little evidence of serious concern for their tragic plight on the part of the government.

7. In view of our findings, it is evident that no real progress has been made in reducing the violations of health rights by the present government of El Salvador since the prior investigation in 1980.

8. Each member of the delegation independently reached the conclusion that continuing military aid to El Salvador will serve only to exacerbate the health problems of that country.

The CHAIRMAN. Fine. Thank you very kindly. I was quite taken with the testimony when I read it.

Our next witness will be Mr. Andrew Messing, the executive director of the Conservative Caucus. Do you pronounce it Vye-enna or Vee-enna?

Mr. MESSING. Vee-enna, Va., sir.

The CHAIRMAN. We pronounce it Vye-enna in Illinois. You are dead politically if you call it Vee-enna. They know you are from Cook County. Thank you. Go ahead.

**STATEMENT OF F. ANDREW MESSING, JR., EXECUTIVE DIRECTOR,
THE CONSERVATIVE CAUCUS, VIENNA, VA.**

Mr. MESSING. Sir, I have had the opportunity to go to El Salvador three times in the last several months. I come here to protest the violation of human rights against the people of El Salvador. However, I will offer a different perspective which is corroborated by events which have taken place in the past several decades.

Mr. Chairman, I wish to ask that a short written piece on El Salvador be entered into the record without being read. This piece is a chapter out of a book called *The Third Option*, written in 1980 by a friend, Mr. Theodore Shackley. Mr. Shackley is recognized as a preeminent authority on counterinsurgency who addresses an approach to human rights in El Salvador in the last portion of this chapter.

The CHAIRMAN. May I see the record insert before putting it in?

Mr. MESSING. Yes, sir. There should be a Xerox copy.

The CHAIRMAN. About how long?

Mr. MESSING. It is about seven pages long.

The CHAIRMAN. Without objection, it will be entered.

Mr. MESSING. In addition, I would like to submit unread one or two articles on irregular warfare I wrote for the *New York Times* entitled "Thinking Irregular Warfare." I wish to draw your attention to the last paragraph, and it should be in your package.

Mr. Chairman, in an irregular war, a primary objective of the opposing force is to violently disrupt the political, socioeconomic, and military functions of the existing government. Not just in one aspect, but in all aspects. The net effect of this action is unchecked, especially in a fragile situation of democratic transition that is occurring in El Salvador, is a destructive "Harmonic Vibration" which eventually leads to the opposing force winning.

Numerous factors rule in favor of the opposing force which I could elaborate on under questioning. It is in large part the direct and indirect consequences of violence generated by the opposing force that expands human rights violations by both sides. I might add, at a quantum rate. It is a reverse pyramid effect. As an example, when the terrorist guerrillas in El Salvador stop traffic on the Pan-American Highway to burn trucks and extort ransom, they have a direct effect in this case. The truck is lost with the produce. Money is stolen, drivers threatened, and more. The indirect damage remains when the trucks slow down or stop taking produce of the campesinos to market. The campesinos do not get paid. They cannot buy clothes or medicine for their families, et cetera.

In other words, their meager economic security is destroyed which in turn impacts on others in a rippling way. This in itself constitutes a violation of their rights, their families' rights, their neighbors' rights, and others. This does not even address the physical security aspect of this particular incidence.

Other examples which one can see this principle illustrated are the blowing of bridges and powerlines and burning of refineries. All these occurrences impact on the ability of the ordinary campesinos to just live. Accordingly, the majority of mass exodus of refugees, approxi-

mately a quarter million into Salvadoran suburban areas, from the agrarian countryside to the relative safety of the cities is proof that the campesinos are trying to regain control of their lives.

At this time, I wish to offer into the record an analysis by a colleague, Frank Aker, which addresses the cycle of these "product improved" insurgencies which is relevant to this subject. In his analysis, he points out the cycle of strategy used by the opposing forces, which have little consideration for human rights.

That is also enclosed in your package, Mr. Chairman.

The CHAIRMAN. Without objection, it will be included in the record.

Mr. MESSING. Mr. Chairman, in closing, I wish to state that as long as the terrorist guerrillas can operate unrestrained, exercising politics from the barrel of a gun, and the Government forces have to operate under modified "Marquis of Queensbury" rules, not only will El Salvador be lost to the Communists, but this will become the pattern for continued Soviet-backed expansion at our doorstep.

Mr. Chairman, human rights and U.S. interests would be better served if you would force the extreme left to lay down their arms immediately, without conditions, and operate in the existing political structure. This action should be done with the assistance of the Organization of American States [OAS], acting as a peacekeeping force, much the same way as is occurring in Lebanon today. This force, which may or may not include U.S. involvement, should guarantee the ability of the existing Government to carry out the reforms now in motion, and for a peaceful settlement of differences through the electoral process.

Mr. Chairman, in the time allotted it is hard to express all the feelings I have on this subject. However, the last thing I wish to say is that while I may disagree with my counterparts on the left end of the American political spectrum. I thank God every day that we both can express our differences openly without regard to our safety and our families' safety. I only hope and pray that eventually the people of El Salvador can come to this arrangement.

That finishes my written portion, and I would just like to say that I, too, have been in the refugee camps, Doctor, and I have seen the suffering that it has caused, and upon questioning a lot of the refugees, a lot of them have voluntarily, not knowing who I was, have said that one of the reasons they were in those refugee camps was to flee the terrorism in the countryside.

This war is a terrible syndrome that is occurring right now. There are human rights violations being committed on both sides, but it is not a chicken and the egg syndrome, Mr. Chairman, what comes first, the chicken or the egg. It is more like a criminal victim syndrome, the criminal being the Communist terrorist guerrillas. They are starting and precipitating this.

I please ask you to get a chance to read some of the history behind this confrontation, this war that is going on, and it is obvious that while there is blame to be spread on both sides, it is overwhelmingly on the opposing forces' side. I, too, have been to the military hospitals and seen the beds crammed side by side, and soldiers dying for the lack of drugs. I, too, have been to other medical facilities, where I have seen El Salvadorans suffering, but it is not the type of suffering that is being generated by the Government solely and overwhelmingly.

I say conversely that it is being precipitated by the Soviets, the Cubans, and all their surrogates against the people of El Salvador in not allowing them to exercise their democratic free will.

Thank you, Mr. Chairman.

[Mr. Messing's prepared statement and attachments follow:]

PREPARED STATEMENT OF F. ANDREW MESSING, JR.

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CHAPTER V

EL SALVADOR

—*A Case Study*
of the Incipient Phase

In July 1979 the Sandinista victory in Nicaragua sent political shock waves through Latin America. Despite what many Americans believed, the defeat and ouster of President Anastasio Somoza was viewed by both conservatives and liberals in many Latin American nations as proof of the decline of United States power and prestige. Whatever your political preference, the fact is that by not intervening decisively, either overtly or covertly, to bring about a more orderly transition of power in Nicaragua, we showed conclusively that we had no stomach to protect what Latin Americans see as important U.S. interests in Central America. Our impotence confused the left, frightened the right,

and bred a new unstable political climate in Central America.

But the impact was not felt in Latin America alone. Signals were received in faraway places. In the Middle East the PLO—always to be counted on as an ally in such “wars of liberation”—threw its support behind the Sandinistas in return for recognition once the struggle was won. Operating from their base in Kingston, Jamaica, they actually sent Fedayeen advisers to assist the guerrillas, as well as trained Sandinista cadres in Palestinian camps. From around the world, terrorist organizations and Communist supporters alike arrived like hyenas to feed on the carcass.

Cuba, never one to look a gift horse in the mouth, took appropriate note of this new reality. Fidel Castro quickly reshaped his concepts of how to export revolution to Central America and the Caribbean in the 1980s. Previously Havana had paid more attention to Nicaragua, Guatemala, and Honduras than to El Salvador. Having been satisfied with inches, he now took yards. During 1979 the insurgency in El Salvador rocketed from the cadre to the incipient phase. By February that year approximately fifty members of the urban terrorist organization Farabundo Martí Popular Liberation Forces (FPL) slipped into Cuba for guerrilla warfare training. Upon completion of this course, they returned home to form the core and leadership of a “Popular Militia” force under the FPL.

The FPL’s namesake—Farabundo Martí—was a Communist killed by security forces in a 1932 peas-

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ant revolt. But the FPL itself, an offshoot of the Salvador Revolutionary Action Party, was not born until 1972. Its founder and leader, Salvador Cayetano Carpio, was a former secretary-general of the Communist Party of El Salvador (PCES). But because the party rejected terrorism, he broke from it and struck out on his own. Under his firebrand leadership the FPL trumpets a revolutionary Marxist creed. Hardly news, its villains are "foreign imperialists"; its goals, the overthrow of existing order and the establishment of a Communist society.

By 1976 the FPL was bombing such targets as the offices of the National Conciliation Party (PCN), National Guard posts, and commercial properties. For funds it kidnapped people for ransom. Alarmed, the El Salvador government hit back and succeeded in rounding up key cadres. The FPL went to ground to lick its wounds, which, while serious, were not fatal. It concentrated on rebuilding itself. In the countryside, as it gathered strength, there was a surge in rural terrorism: attacks on isolated police posts, kidnappings, intimidations.

On the whole, FPL personnel were busily training in the Soviet Union, Mexico, Guatemala, and Costa Rica as well as in Cuba. And this time there would be no mistakes, no overreaching. Those trained abroad in turn trained others back in El Salvador. Today's estimates of the FPL's manpower vary, but a strength of 800 to 1,000 combat-ready guerrillas is not farfetched. What's more, this hard core is backed up by some 2,500 tacit supporters. Leadership of the insurgency has tightened up. The FPL is directed by

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a tough, central group which, through harsh discipline and revamped security procedures, has had remarkable success in foiling penetration since the 1976 debacle. As a result, much is unknown about the actual size of its central command and its makeup.

Available facts suggest the FPL is organized into four regional committees based in the cities of San Salvador, San Miguel, Santa Ana, and Aguilares. The most important regional organization is buried deep within the capital of San Salvador. The regional organizations are subdivided into local committees which use classic cell structures to limit exposure of the cadres one to the other. This improves security and may explain why FPL action teams have been so successful in abduction and assassination operations.

Financing has been no problem. For example, one knowledgeable Mexican banking official estimated that from 1976 to 1978 the FPL gained more than \$9 million in ransoms alone. A year later, a risk assessment expert, working out of London for an insurance company, concluded that in the first three-quarters of 1979 the FPL had accumulated more than \$4 million through kidnappings. This same individual also acquired fragmentary evidence that the Soviet Embassy in Costa Rica is a conduit for funds going to the FPL. Indeed, the FPL is so comfortably in the black it could not only sustain its own operations but grubstake the Sandinista National Liberation Front of Nicaragua as well. In addition,

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reports from American businessmen working in El Salvador suggest that the FPL has given seed money to the revolutionary group in Guatemala known as the Army of the Poor (EGP).

Like its healthy cash flow, arms are rarely in short supply. The FPL has acquired an assortment of weapons through familiar insurgent methods—stealing from the Salvadorian forces, buying on the black market, and smuggling from abroad.

But the picture is even gloomier still. The FPL is not alone in El Salvador. Other insurgent groups are also in touch with Cuba. As it has noted increasing violence in El Salvador, political polarization, and U.S. timidity, Havana has become more willing to take political risks. Officials from Cuban embassies in Costa Rica and Mexico have dealt with a second Salvadorian terrorist outfit, the Armed Forces National Resistance (FARN), which probably numbers between 600 and 800 men. In addition, some of the leaders of the FARN, like Eduardo Sancho Castaneda, have visited Cuba for strategy discussions. During these sessions the Cubans have urged increased cooperation between the various insurgent groups and the Communist Party of El Salvador. Prior to events in Nicaragua, such advice went unheeded because of differences between the Communist Party and insurgents about when and how to stage the revolution.

As cadres in El Salvador studied the causes and consequences of Somoza's defeat, they realized that El Salvador is too small (2,400 kilometers) and too

densely populated (4,515,000) to be a stage for a rural, Nicaraguan type of revolution. Instead, they elected to return to urban insurgency, using the vehicles of labor agitation and terrorism. With improved security, a trained combat force of 800 to 1,000 men, and a hodgepodge ideology of Marxism-Leninism and Maoism, the FPL was ready to try once again. It became bolder as this confidence grew. Assassinations were added to the wave of kidnappings. The unified Popular Liberation Army (FPLP) was hatched from cadre cells and guerrilla bands. Growth of their mass military power, according to FPL thinking, depended directly on how soon the Sandinistas in Nicaragua consolidate themselves and are then able to supply them with weapons on a large scale. Previously the FPL set no timetable for victory. But buoyed by the Nicaraguan experience, individual cadres have predicted the fall of the government by the end of 1980.

El Salvador, headed by President Carlos Humberto Romero, appeared in mid-1979 to recognize that social discontent has made open revolution less a possibility and more a certainty. But his government did little, if anything, to cope with political chaos. For want of a better policy, the president simply decided to hold free municipal legislative elections in March 1980 under international supervision. Political exiles were told they could return home to participate in this "democratization" process. The hope was that a civilian would become the next president and allow military leaders to return to the barracks.

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This wishful thinking was challenged by those in the military who believed that such steps were only placebos and as effective in stopping social or political unrest as a BB gun might be in bringing down a rampaging elephant. As a result, even tourists in El Salvador during the summer of 1979 could not help overhearing rumors of a pending coup. Sure enough, their ears had not deceived them. With kidnappings, assassinations, and bombings by leftist organizations multiplying, there was a corresponding increase in lawlessness by the right. Anarchy was perceived by the military to be just one or two more murders away. A two-man junta decided to correct the situation. On October 15, 1979, it announced President Romero's ouster.

The apparent leaders of the coup were a Colonel Jaime Abdul Gutiérrez and Colonel Adolfo Arnaldo Majano. They quickly expanded the junta to a five-man body that included three civilians. But it soon became clear that the coup was really the handiwork of more junior officers who had organized themselves into a clandestine Military Youth Council. Predictably, the change of government did little to slacken the tensions. The militant left, including the FPL, lost no time in denouncing the coup as a maneuver designed to disguise the former government in sheep's clothing. Nothing, they said, had changed. Worse, many believed them.

In the first quarter of 1980 El Salvador was still in the incipient phase of insurgency, but the "war of national liberation" has since been nourished. In the coming months it is sure to expand. Much depends

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on the will of those who are now in power to meet the continuing challenges of change. Leaders favoring a democratic approach to the future face formidable odds in attempting to save the country from civil war, anarchy, and eventual Communist control. A full-scale Marxist revolution can engulf El Salvador at any time as the insurgency mushrooms out of the incipient phase.

What can be done to help El Salvador stay out of the Communist orbit? First, the government of El Salvador must field sufficient quick reaction forces to check the current wave of terrorism. Nothing can be accomplished without meaningful security. Yet, ominously, visitors note there is rarely a visible sign of authority when violence takes place. This impression of helplessness must be eliminated by the deployment of police and military personnel into potential troublesome areas. The stutter of submachine gunfire and the crack of explosives cannot go unanswered. Police and military communications desperately need improvement. Prompt grants of such equipment by the United States would be one way of helping a neighbor in need.

But muscle *must* be accompanied by an improvement of the country's political climate. Colonels and majors are not likely to accept democratic reforms and a true civilian rule until they see progress toward security and stability. The United States must accept this reality. But it should not act alone. Other interests are at stake here—for example, those of West Germany and Japan, whose products and

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technology have found eager markets in our hemisphere. Together, we should persuade the junta to develop a coherent program of reform. Some examples:

- A date for free elections.
- Unrestricted return of exiles to participate in politics.
- A church-state dialogue to enhance human rights and the social well-being of the populace.
- Financial pump-priming for urban and rural reform. This could be obtained from foundations, trade unions, or business interests in West Germany, Japan, and the United States.

Most immediately, the United States should assist Salvadorian authorities by applying tourniquets to arms-smuggling arteries from Nicaragua and Cuba. The two countries should also cooperate to penetrate terrorist groups, rendering them less effective. We have the tools and know-how. Time must be bought with which to accomplish social, economic, and political goals. A viable democratic center might emerge in the less violent atmosphere which would be created by reforms. If it did, extremism of both the left and the right could be contained and then reduced.

It is unlikely that El Salvadorian leaders, alone and unaided, can derail the revolutionary locomotive now gathering momentum. They must have U.S. help. From my own experience it is possible to estimate that the cost to the U.S. would not exceed \$5 million a year. As for staff, no more than five intelligence professionals assigned full time would be needed. By anyone's measuring stick, this is a bargain. Consider the alternatives.

[From the New York Times, Apr. 23, 1982]

THINKING IRREGULAR WARFARE

(By F. Andy Messing, Jr.)*

VIENNA, VA.—In Washington, hundreds of defense experts have been spending countless hours debating how to use defense dollars to rejuvenate our conventional and nuclear forces. While this thinking is necessary to develop a proper mixture of deterrent powers, a crucial element is missing from our formula but not from Soviet strategy—the ability to conduct efficient irregular warfare. By irregular warfare, I mean unconventional warfare, limited conventional military actions and reactions, and anti-terrorism.

Moscow understands the effectiveness and economy of irregular warfare. It realizes that it is possible to project power worldwide while tiptoeing around the nuclear tripwire. Thus, it has placed more than 200,000 military personnel, called Spetsnaz—an acronym for Special Purpose forces—under the K.G.B.

These highly trained, politically oriented personnel have been sent to many countries, among them Afghanistan, Cuba, Nicaragua, and Angola. In fact, South Africans killed numerous members of Spetsnaz and their K.G.B. controllers in recent battles in Angola. This and other sizeable evidence, shows increasing use of Spetsnaz for a wide range of missions—not even taking into account similar units in the Warsaw Pact performing tangential operations for Moscow.

Conversely, for irregular warfare, the United States has only approximately 5,000 active-duty Army personnel in various stages of readiness. Furthermore, the Special Forces ("Green Berets"), the main component of the Army's irregular-warfare troops, is faced with a continual drain of combat-experienced soldiers; 70 percent of those joining are first-term volunteers. The Navy has a few hundred Seals, viewed as the best managed and organized of all people trained in irregular warfare. The Air Force has a small eclectic group of aircraft that cannot meet irregular-warfare requirements worldwide. Of a total of 4,500 mainly Army reservists, except for a few soldiers and units there is virtually no such combat-readiness.

All this does not come close to America's total requirements. More distressing, because of a lack of coherent national strategy, we hardly use our irregular-warfare forces to counter actual or potential Soviet actions. This problem is further complicated by a multilayered chain of command that diminishes the value of these units.

Some Pentagon bureaucrats say that an upgrading of our irregular forces is just around the bend. However, most equipment and training funds to bring about this change are being built into future armed forces budget requests, and this puts them in direct competition with the rest of the military for finite resources. Not since John F. Kennedy's revitalization of the "Green Berets" has an Administration considered filling this void—until now.

Some key Reagan Administration officials see that even if we have 16 combat-ready divisions as well as a Rapid Deployment Force, their only use is psychological deterrence or limited high-stakes missions that could quickly lead to nuclear war. Accordingly, in looking for a low-cost way to protect and project our strategic interests, the officials are settling on rebuilding, and consolidating our irregular-warfare forces to create a version of Spetsnaz. This organization, which would be useful across the entire spectrum of warfare, would consist of units like the Special Forces, Rangers, Army psychological operations units, Navy Seals, and special Air Force units, among others.

Encouraged by Maj. Gen. John Singlaub (Ret.), a participant in three wars and an irregular-warfare specialist, the key officials are making progress in their thinking. General Singlaub has encouraged them not to regard our projected Special Purpose Forces as a minor element of our conventional forces to be used piecemeal. He feels that it should provide an additional option for the Commander in Chief to use to project strategic power. While receptive, these officials are caught up in the Vietnam backwash and today's focus on nuclear strategy, and an oafish bureaucracy that guards expensive pet projects. One official who works in this area concludes: "Only a specific order by the President will get the organization, and, most importantly, the immediate funding required to counter the escalating level of violence promulgated by the Soviets."

*F. Andy Messing, Jr., is executive director of The Conservative Caucus, "a nonpartisan grassroots lobby," and a major in the Special Forces Reserve.

America is being blindsided militarily. El Salvador is only an example of how, because of a lack of organization and coherent policy, we are losing this undeclared World War III. President Reagan must heed what the Chinese military expert Sun Tzu said in 350 B.C.: "One who has a few must prepare against the enemy; one who has many makes the enemy prepare against him." The Pentagon must prepare to respond to the Soviet Union's continuing engagement in irregular warfare in order to keep America free and away from nuclear conflict.

THE DOCTRINE OF REVOLUTIONARY WAR IN LATIN AMERICA

by Frank Aker and Lewis A. Tambs

Background Notes

Spanish Inheritance

1. Spanish culture, temperament and history have proven to be compatible with the *concept and style of guerrilla warfare* (guerrilla means "little war").

2. The first large scale example of rural guerrilla warfare in modern times was conducted by Spaniards in 1808-1813 against the French invaders.

3. Latin America has a very high percentage of young people in its population. There is too little industry in this agricultural area to provide needed employment of excess population and to develop a solid middle class. A potentially explosive situation exists without the stabilizing influence of the U.S. as a dependable trading partner and as a source of productive and profitable investments.

Lenin's Legacy

1. Lenin provided *political application* to guerrilla warfare. He developed a Communistic doctrine of revolutionary war that pits the dissatisfied lower class against the social and government structure that is allegedly abusing it. This has provided many Latin Americans the spark and fuel (excuse) to seize political power by illegitimate and coercive means.

2. Partisan warfare is the only safe, practical means of Communist expansion in this area of the world. It provides the Soviets with a low risk, low cost, low profile approach to the isolation of the U.S. at an extended range from the Russian motherland.

Art and Science of Revolutionary War

1. The Soviets have developed for Latin America an historically and currently successful plan of action for starting, waging and winning a war of National Liberation. This will eventually lead to hegemony of all of Latin America and compromise the U.S.'s ability to be a competing power in world affairs.

2. Moscow and Havana's blueprint (to be outlined) consists of four distinct parts or phases: (a) organization and preparation; (b) limited war of expansion; (c) conventional war and exploitation; (d) exporting and support of contiguous revolution.

PHASE I: ORGANIZATION AND PREPARATION

(Note: already accomplished in all Meso-American and some South American countries.)

Target Country Selection

1. Underdeveloped countries are Soviet targets of opportunity since they may be in the economic phase of capital formation and, thus, have a few wealthy families, a small middle class and a large majority of marginal rural laborers. While it was once believed that the existence of a large middle class would preclude a revolutionary situation, the concrete cases of Uruguay and Argentina, especially the former where neither deprivation nor tyrant existed have dispelled this myth. Nevertheless, in Central America where the politics of envy of the *petit bourgeoisie* can be played against the well-to-do producers, the existence of large numbers of unemployed or underemployed agricultural laborers is important. Even in these cases, as Ernesto "Che" Guevara learned to his dismay in Bolivia, other factors such as race and nationalism may prove critical.

2. A choice of terrorist target is a nation which is ruled by one man, party, or single family. *Caudillismo* and *personalismo* combined with *continuismo* facilitate focusing. The charge of corruption is an excellent emotional propaganda tool and the revolution will have an easily identifiable reference point.

3. Most Central American and Caribbean countries have societies which are unable to keep up with the dynamic changes of the world. The society is unable to absorb change allowing for breakdown of norms or traditions leaving a discontent-disoriented youthful population. Youth can easily be manipulated by taking advantage of their inherent impatience and idealism through the use of abstract themes that have broad appeal. These themes need not be realistic or attainable, just emotional. Youth are willing to risk all they have, because they do not have much.

*Initial Establishment: Stage 1***Leadership**

1. Soviet agents have identified known discontent opinion leaders and have sent them for training in U.S.S.R. for 2 - 4 years. They have learned how to form and use the political element (infrastructure) to run a revolutionary war. "As long as the infrastructure survives—the revolution survives. To this end, numerous candidates are trained.

2. The Soviets have thoroughly analyzed the social class structure identifying grievances as a "cause." The candidates are thoroughly trained to exploit the cause to secure support of factions and people.

3. Soviet emphasis is to develop an indigenous leadership capable of carrying the momentum of Revolution to full term. They must have independent skills to compile an intelligence base needed to formulate campaign plans and to support propaganda objectives and themes.

Back to Homeland

4. Leaders are sent back to their homeland and initially act independently to form their own competitive organizations. Then, as the cream rises to the top, various leaders will merge their organizations to form coalitions under the more successful leader.

5. First major effort is to win over the Catholic Church by whatever means. This is done by supporting the Church, it works with the poor, etc. To win the Church, they win many supporters.

6. Leaders are installed with the concept that this only is the beginning and that their ultimate purpose is to overthrow the U.S. These leaders are committed to a protracted war. They are indoctrinated to fight as long as it takes to win.

Guerrilla Cadres

1. Soviets have identified initial cadre members to be trained by seasoned guerrillas in other Latin American revolutions or in special camps located in Cuba, Costa Rica and Nicaragua. They learn physical conditioning, survival, political ideology and tactics. It is not necessary for the cadre members to be Communist, only that they be dedicated to the overthrow of the U.S.

2. Cadres return to coordinate with the leadership, establish a rural base, to recruit, train, equip and indoctrinate other guerrillas.

3. Individuals of extraordinary ability may rise to positions of leadership within the infrastructure or form their own infrastructure.

4. First actions—to infiltrate members into the policy machinery of mass organizations; news media, unions, schools, cooperatives, Church, armed forces, police and government. They start a systematic destabilization and misinformation campaign.

Developing Support: Stage 2

1. Bases are established by each faction in inaccessible rural terrain to disperse assets—avoiding a single catastrophic blow. Terrain selected is contiguous with a country's border in or close to a revolution. Bases in contiguous countries are most valuable in Phase I to avoid government troop encirclement.

Strategic Holdings

2. Strategic holdings in a revolutionary war are not land or space—that is a conventional concept—it is the "hearts and minds of the people." Maps should not show ground held by forces but areas held by people loyal to the revolutionary cause. Rural areas are sparsely populated receiving little direct government protection, assistance and communication. Rural areas will be more susceptible to supporting insurgents if they provide what the government does not.

The guerrilla units dispatch agitators to spread propaganda to immediate area to gain support—provide schools, medical centers, local security, agriculture assistance in return for food, medicine, recruits and information. Hence the close cooperation between insurgents and some international relief agencies.

The concept of dual government (legitimate and revolutionary) emerges.

3. Infiltrated members in urban areas initiate strikes, riots, sabotage, black markets, rumors and agitation of minorities to cause social and administrative disorder.

This initiative will keep government troops and police tied to urban areas. It is cheap to produce, but costly for government to prevent. Best way to purchase time to change attitude.

PHASE II: Limited War of Expansion

Guerrilla Military Activity

1. Basic assumption—a Latin American government cannot sustain a lengthy internal war financially, psychologically or politically.

The guerrillas must keep constant pressure by maintaining the initiative. Key to controlling initiative is knowledge of enemy's position, strength and intentions done by a solid intelligence system set up in Phase I and constantly being expanded to where every civilian can be considered an agent.

Scatter Forces

2. Guerrillas scatter forces throughout the country and initiate disturbances and demoralizing attacks on supply lines, communications such as railroads and bridges. Weak army columns are ambushed. Hit-and-run raids are sudden, vicious and precise execution and rapid dispersal to not allow the government to reinforce, direct air and artillery fires, or isolate insurgents by using paratroops or helicopters. This places a strain upon the government conventional forces by a process of attrition both psychological and physical. Urban activity is stepped up by directly attacking the property and wealth of those in power. Banks are of particular importance both as symbols and as sources of funds.

3. The government, under pressure to maintain world image of stability (politically, militarily and economically), to receive foreign aid, and to have its trade and military alliances honored, will disperse troops to police threatened areas. This causes government forces to be weak at all points. The guerrillas can concentrate their forces at the government's weak points, one by one; defeating the regular troops in detail, yet preserving their own strength.

4. Government forces will predictably intensify repression with road blocks, house searches, arrests of the innocent, closing streets. Police terror will become routine along with political repression.

Propaganda

Guerrillas will make excellent propaganda use of this both on a local and worldwide level. To keep the time honored class privileges, the government power will change hands within the family, part, or even be taken over by the military. Government soldiers will begin to show signs of tiring, they will lose faith and decline in morale.

5. Insurgents will avoid direct confrontations while building a well-armed, mobile army, through capture of arms, recruitment and defection of government troops with his expertise.

Terrorism

1. Should for some reason the guerrilla activities fail and/or the government takes steps to remove the cause, then the guerrillas will have no other choice but to seek power by terror and intimidation. This is done by committing atrocities not against the government, but against the people on whose behalf the insurrection is instigated.

It will make no difference to the local or worldwide press—they will still sympathize and call it a guerrilla action in a civil war.

2. Terrorism can never succeed militarily, only psychologically. It is usually given into by appeasement. This is accomplished by propaganda leading to a negative governmental political approach in which it is believed no defense is possible against terrorism. This leads to a nation's moral exhaustion and a predisposition to surrender.

Respond to Terrorism

3. To respond to terrorism an arch-military conservatism develops. This is embodied in a blind adaptation of a European pattern of warfare of ponderous armor and static heavily fortified garrisons. The government leadership is oriented towards war of mobility and clearly formulated objectives of attack, a strategic approach in which armor is the chosen instrument. This will fail against the guerrilla turned terrorist and will result in an increased feeling of defeatism on the part of the military and ultimately fatalism. All the government needed to have done was change tactics and to be prepared for a protracted war. This military conservatism is expensive and will put more strain on the economy than it can stand.

4. Terrorist victory is near when the political element's defeatist attitude infiltrates the military arm. The first sign of this is when the government seeks to negotiate a settlement. This signals the army that the government no longer has confidence in its ability to win.

Demoralization and Dissatisfaction of the People with the Government

1. Extensive propaganda campaigns. The people will judge what is promised by the rebels not what is provided, but the government must run on its record. As more territory is won over and absorbed, enough people will actively commit themselves to the revolution so that "home guards" can be formed. These local vigilante groups are not combat units, they serve as police and protect guerrilla areas. It is their job to discourage loyalists, obtain information, and oblige support and contributions.

Back the Rebels

In many cases, Church officials will back the rebel factions, having been won over by the propaganda that the rebels are dedicated to helping the poor.

2. A long internal war compromises foreign relations: no country or company wishes to invest in a risky area or deal with a toppling government. Many major families will begin leaving the country with their wealth.

3. A long war also causes dissention among the people because the government cannot keep order in guerrilla infested areas. Acts of terror and sabotage occur which make civilians lose confidence in the strength and authority of the government. War weariness and war frustration arises.

The government, by constantly increasing the troop strength to confront the guerrillas conventionally, will cause a labor drain and subsequent economic and political dislocation.

PHASE III: CONVENTIONAL WAR AND EXPLOITATION

Guerrilla Military Activity

1. Equalization of manpower and equipment between insurgents and government troops.

Government troops are overextended and revert to defensive posture around fortified bases in a mistaken belief that they must hold territory.

2. Guerrilla army uses positional warfare to pin and hold regular field forces, while mobile units encircle and then destroy government units. The conventional battles will break the back of the government's army and the will to win will be exhausted.

3. Insurgent's final drive will be to capture the capital. This effectively cuts the head of the government snake and without it the rest will die.

Guerrilla Political Activity

1. Negotiations will be well publicized. The press is particularly fond of this type of media event—real or not. The international media will be used to consolidate and repeat the revolution's goals, frustrate the government, and influence world public opinion. The only concessions accepted are those that aid the insurgents. (Never negotiate with a Communist).

2. Coalition government—any sign of compromise will be a sign of weakness and appeasement leading to ultimate surrender.

PHASE IV: EXPORTING AND SUPPORTING OF CONTIGUOUS REVOLUTION

Revolutionary Puppet Government

1. Soviet and Cuban "advisors" will take control of the new government's operations and military. This will leave a rubber stamp government of revolutionary leaders.

2. Internal security will be tightened with any and all opposition brutally disposed of. This organized terror will be coupled with a comprehensive program to direct every aspect of an individual's life—his work and life will be dictated—application of the six principles of retaining power.

Next Target

1. The recently revolutionized country is then obliged to render assistance to all other wars of National Liberation in the area.

2. Citizens of the newly conquered country will be told it is a source of comradeship, revolutionary ideals, and repayment, and that they must provide bases and training camps, troops, arms and ammunition.

3. The best next object will be a contiguous nation—Nicaragua, El Salvador, then Guatemala.

The CHAIRMAN. Thank you, Mr. Messing. We appreciate that addition to our hearing today.

Our next panelist will be Dr. Alfred Gellhorn, representing the International League of Human Rights, the American Association for the Advancement of Science, and the New York Academy of Sciences, Washington, D.C.

Mr. Gellhorn?

STATEMENT OF DR. ALFRED GELLHORN, REPRESENTATIVE OF THE INTERNATIONAL LEAGUE FOR HUMAN RIGHTS, THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, AND THE NEW YORK ACADEMY OF SCIENCES

Dr. GELLHORN. Thank you very much, Chairman Percy.

My background is in public health. At the moment I am a visiting professor at the Harvard School of Public Health and professor at the City College School for Biomedical Education in New York City. I have been dean of the University of Pennsylvania Medical School and an immediate past president of the Council for International Organizations of the Medical Sciences. I have had considerable experience in developing countries, both in South America and in Africa. I appreciate the opportunity to appear today on behalf of the organizations you have indicated—the International League for Human Rights, the American Association for the Advancement of Science, and the New York Academy of Sciences.

These organizations, together with the National Academy of Science and its Institute of Medicine, cosponsored a medical mission to El Salvador to determine the fate of disappeared health professionals and scientists and to assess the impact of conditions on medical institutions and the health of the public.

From January 11 through 15, we spoke with a wide range of persons including government officials, the archbishop and others in the church, the International Committee of the Red Cross, the Ministry of Health, and numerous private citizens. We had the opportunity to visit four places of detention for political prisoners, two refugee camps and the public maternity hospital.

Wherever we turned we found the chilling effects of the ever-widening devastation to health and health care due to the breakdown of education, the budget slashing of national health programs, and to the repression of fellow human beings by the systematic use of terror in ways that are hideous and frightful.

The persecution of health personnel is real. It began in 1979 and intensified through 1981 when a group of doctors, nurses, and medical students protested the killing and kidnapping of patients and doctors in hospitals, sometimes even during surgery. Retaliation against this group by death squads, suspected to be Government forces, was swift and brutal. Its members were either killed, disappeared, or they fled to avoid death.

We came to El Salvador with a list of 20 health workers and scientists who had disappeared in the last 12 months. Our investigation revealed that only seven could be accounted for: four in prison, two who had been freed, and one confined to a mental hospital outside the coun-

try. There is no trace of the other 13. Moreover, while in San Salvador we were given documentation on the disappearance of 20 additional health workers during 1982. From frightened families and colleagues we also learned of a number of other disappearances and killings of physicians, nurses, and paramedics.

After interviews with the colonels in charge of the two branches of the security forces, the National Police and the Treasury Police, during which we learned that (a) there is no sharing of information about the arrests made by these forces and (b) that it is difficult to control their men on occasion, we were shown the detention facilities where political prisoners are held for up to 15 days and often longer.

At the National Police headquarters we walked along a row of foul, pitch-black, steel-barred cells with only a concrete bench and a hole in the floor for a latrine. We were not permitted to speak with or examine the political prisoners being held there, but they looked dirty and haggard. We were also shown the interrogation rooms—small wooden boxes with a desk, two crude chairs and a hanging overhead light and observation window.

We were not taken to the Sección Cain where we were later told by other prisoners that detainees are tortured and interrogations are conducted with the prisoners blindfolded. Representatives of the International Committee of the Red Cross and the church's legal aid committee also have heard numerous reports of this infamous section.

Health and health care in El Salvador has suffered since 1979 over and beyond that expected in a poor, developing country. Public health officials indicated that such measures of the general state of health as tuberculosis, childhood preventable infectious diseases—measles, diphtheria, poliomyelitis—infant mortality and malnutrition suggest a deterioration, although documentation is imprecise. For example, suspected cases of tuberculosis cannot be confirmed in most instances because of the absence of X-ray films.

The public educational system in San Salvador is in disarray. The large number of school teachers, university faculty, including medical school professors who have disappeared, been imprisoned as political prisoners, or who have fled the country has depleted the educational establishment. The National University has been sealed from all entrance and a major building of the medical school away from the University has been literally gutted by the military so that only external walls remain. The devastation is both intellectual and physical.

Our group visited two facilities for political prisoners operated by the Ministry of Justice—Ilopongo for women and Mariona for men. We were permitted to interview the inmates alone and without time restriction. Medical care in the women's prison is provided by a recent medical school graduate who devotes a few hours a week to the prison—just one of four jobs.

Prescriptions for medications are usually not available in the prison medical facility, so they are disregarded or, if the prisoner is fortunate, the family may obtain the medicine. In both prisons the political prisoners have established their own health facility with minimal supplies of drugs and first aid.

One female prisoner we saw was clearly psychotic and had apparently been imprisoned because she freely confessed to belonging to all of the subversive groups which her interrogators named. She has never

been charged and has never been examined by a psychiatrist—a clear violation of the Geneva Convention for the management of prisoners who are insane.

The accounts given by the inmates were horrifying and monotonously similar—abducted at night by heavily armed men in civilian clothes or military uniforms, blindfolded, tortured, often raped, humiliated, finally forced to sign confessions and committed to prison without formal charges or the opportunity to appear before a judge. Several prisoners showed us their scars from acid and other forms of torture. We examined one recent detainee who had open sores from torture during interrogation. We also met an older campesino who had both testicles surgically removed after being severely beaten in the genitals.

Few prisoners have been tried and convicted. Many are being held for extended periods without appearing before a judge. However, the prisoners told us that they are "the lucky ones." They are alive and probably will not disappear, no matter that they are being held indefinitely without due process.

In summary, we found direct and indirect evidence of frightful violations of human rights. We found fear among private citizens who feel unprotected in a lawless society. We found that the health of the public has suffered, that medical education, medical care, and medical facilities have been desperately depressed.

Therefore, we respectfully urge that the aid to this small country emphasize life-giving essentials such as medicines, vaccines, medical equipment, and teaching materials rather than death-dealing military aid. Particularly do we urge this in view of the zero budget through AID for public health in 1983.

Thank you, sir.

[Dr. Gellhorn's prepared statement follows:]

PREPARED STATEMENT OF DR. ALFRED GELLHORN

My name is Alfred Gellhorn. I am a specialist in internal medicine and in public health. Currently I am a visiting professor at the Harvard School of Public Health and professor at the City College School for Biomedical Education in New York City. I have been the Dean of the University of Pennsylvania Medical School and am the immediate past-president of the Council for International Organizations of the Medical Sciences. My experience in developing countries includes extensive lecturing in South America when I was professor of medicine at Columbia University and in the past two years I have interviewed many political refugees from Uruguay in Mexico. Very recently I participated in an international medical conference in Ibadan, Nigeria.

I appreciate the opportunity to appear today before this distinguished Committee on behalf of the International League for Human Rights, the American Association for the Advancement of Science and the New York Academy of Sciences. These organizations, together with the National Academy of Science and its Institute of Medicine co-sponsored a medical mission to El Salvador to determine the fate of disappeared health professionals and scientists and to assess the impact of conditions in El Salvador on medical institutions and the health of the public.

From January 15, 1983 we spoke with a wide range of persons including government officials, the Archbishop and others in the Church, the International Committee of the Red Cross, the Military of Health and numerous private citizens. We also visited four places of detention for political prisoners, two refugee camps and the public Maternity Hospital. Wherever we turned we found the chilling effects of the ever-widening devastation to health and health care due to the breakdown of education, the budget-slashing of national health programs, and to the repression of fellow humans by the systematic use of terror in ways that are hideous and frightful.

The persecution of health personnel is real. It began in 1979 and intensified through 1981 when a group of doctors, nurses and medical students protested the killing and kidnapping of patients and doctors in hospitals, sometimes even during surgery. Retaliation against this group by death squads, suspected to be government forces, was swift and brutal. Its members were either killed, "disappeared," or they fled to avoid death.

We came to El Salvador with a list of 20 health workers and scientists who had "disappeared" in the last 12 months. Our investigation revealed that only seven could be accounted for: four in prison, two who had been freed and are confined to a mental hospital outside the country. There is no trace of the other 13. Moreover, while in San Salvador we were given documentation on the disappearance of 20 additional health workers during 1982. From frightened families and colleagues we also learned of a number of other disappearances and killings of physicians, nurses, and paramedics.

After interviews with the Colonels in charge of the two branches of the Security Forces, the National Police and the Treasury Police, during which we learned that (a) there is no sharing of information about the arrests made by these forces and (b) that it is difficult to control their men on occasion, we were shown the detention facilities where political prisoners are held for up to 15 days and often longer. At the National Police Headquarters we walked along a row of foul, pitch-black, steel barred cells with only a concrete bench and a hole in the floor for a latrine. We were not permitted to speak with or examine the political prisoners being held there but they looked dirty and haggard. We were also shown the interrogation rooms (small wooden boxes with a desk, two crude chairs and a hanging overhead light and observation windows). We were not taken to the Seccion Cain where we were later told by other prisoners that detainees are tortured and interrogations are conducted with the prisoners blindfolded. Representatives of the International Red Cross and the Church's Legal Aid Committee also have heard numerous reports of this infamous section.

In July of 1982, the International Committee of the Red Cross threatened to leave El Salvador because of growing concern over the Salvadoran armed forces' human rights abuses, particularly this practice of not taking prisoners. International Red Cross Officials told us that they had decided to remain in the country, although their problems have not been resolved, because on balance they feel that they are a force for decent human behavior.

Health and health care in El Salvador has suffered since 1979 over and beyond that expected in a poor, developing country. Public health officials indicated that such measures of the general state of health as tuberculosis, childhood preventable infectious diseases (measles, diphtheria, poliomyelitis) infant mortality and malnutrition suggest a deterioration although documentation is imprecise. For example, suspected cases of tuberculosis cannot be confirmed in most instances because of the absence of X-ray films.

The Ministry of Health has suffered a 50-percent reduction in its budget during each of the last 2 years and is finding it difficult to provide adequate staff and medical services for the 6,000 beds under its jurisdiction. We visited the only public Maternity Hospital in San Salvador which has 75 deliveries each day but only 263 beds. The patient turnover is very rapid but even so up to three women may be assigned to a single bed. Premature births are common but none of the bassinets for premature babies are functional. The X-ray equipment is obsolete, there is no X-ray film, the pharmacy shelves are thinly supplied and anesthesia equipment is outdated and unsafe but is used for the 5 to 10 Caesarean sections daily.

The public educational system in San Salvador is in disarray. The large number of school teachers, university faculty, including medical school professors who have "disappeared," been imprisoned as political prisoners or who have fled the country has depleted the educational establishment. A leading professor of the Physics Department said that out of 75 professors and assistants to have "disappeared," 2 were found dead and 2 are in prison. In the Psychology Department, 40 students are known to be dead or have "disappeared." The National University has been sealed from all entrance and a major building of the medical school away from the University has been literally gutted by the military so that only external walls remain. The devastation is both intellectual and physical.

Our group visited two facilities for political prisoners operated by the Ministry of Justice: Ilopango for women and Mariona for men. We were permitted

to interview the inmates alone and without time restriction. Medical care in the women's prison is provided by a recent medical school graduate who devotes a few hours a week to the prison—just one of four jobs. Medical records are inadequate and incomplete. Prescriptions for medications are usually not available in the prison medical facility so they are disregarded or, if the prisoner is fortunate, the family may obtain the medicine. In both prisons the political prisoners have established their own health facility using minimal supplies of drugs and first aid materials.

One female prisoner we saw was clearly psychotic and had apparently been imprisoned because she freely confessed to belonging to all of the subversive groups which her interrogators named. She has never been charged and has never been examined by a psychiatrist—a clear violation of the Geneva Convention for the management of prisoners who are insane.

The accounts given by the inmates were horrifying and monotonously similar—abducted at night by heavily armed men in civilian clothes or military uniforms, blindfolded, tortured, often raped, humiliated, finally forced to sign confessions and committed to prison without formal charges or the opportunity before a judge. Several prisoners showed us their scars from acid and other forms of torture. We examined one recent detainee who had open sores from torture during interrogation. We also met an older campesino who had both testicles surgically removed after being severely beaten in the genitals.

Few prisoners have been tried and convicted. Many are being held for extended periods without appearing before a judge, illegal even under the repressive emergency decrees. However, the prisoners told us that they are "the lucky ones." They are alive and probably will not disappear. No matter that they are being held indefinitely without due process.

In summary, we found direct and indirect evidence of frightful violations of human rights, we found fear among private citizens who feel unprotected in a lawless society. We found that the health of the public has suffered, that medical education, medical care and medical facilities have been desperately depressed. Therefore, we respectfully urge that the aid to this small country emphasize life-giving essentials such as medicines, vaccines, medical equipment and teaching materials rather than death-dealing military aid. Particularly do we urge this view of the zero budget through AID for public health in 1983.

The CHAIRMAN. Thank you very much, Doctor. We appreciate that statement.

Dr. Ronald Godwin, executive vice president, The Moral Majority, Washington, D.C.

STATEMENT OF DR. RONALD S. GODWIN, EXECUTIVE VICE PRESIDENT, THE MORAL MAJORITY, WASHINGTON, D.C.

Dr. GODWIN. Thank you, Mr. Chairman. It is good to be here.

I recently went to El Salvador as the representative of Dr. Jerry Falwell for two reasons—one, to determine for ourselves the effect of the war on the country and, two, to see what our private ministry might do to alleviate the suffering of those displaced by the war there.

As the chairman might already know, the "Old-Time Gospel Hour" and the Thomas Road Baptist Church and the ministry of Dr. Falwell have carried on major relief efforts in many parts of the world, building hospitals and schools in Haiti, doing relief work in Cambodia, Thailand, operating a mercy ship in the South China Sea, other relief work in South Africa and in various parts of the world.

We receive numerous requests to mount a private relief effort for the children and the refugees in El Salvador, and so we recently traveled there. In a period of 4 days, we visited an extraordinary wide variety of representatives of that country. We visited those who had had their lands taken from them and heard their perspective.

We visited the President and the First Vice President of the country. We visited the commanding general, other military officers. We visited with union leaders who represented the various collective farm organizations. We visited with our U.S. military advisers, with Ambassador Hinton, with representatives of the Catholic Church. We visited several camps in and around El Salvador containing refugees and found those same conditions that have been already described.

More than that, we visited certain areas of town that contained thousands of displaced people who were literally living on the streets and our description of those conditions would not vary markedly from those already described here. We also traveled the length and breadth of the country in a helicopter provided to us by the President of the country and visited a number of towns and army bases throughout the country.

We heard the same perspective told from many different points of view, and we learned that we were certainly not weekend experts. There are several points that I would like to make. I will just refer very briefly to my written comments.

I believe that the United States, in spite of the terrible crimes that are being committed by both sides down there—the murders, the atrocities, the torturing, the violation of human rights—cannot afford to walk away from that country. We cannot afford to give in to our revulsion of what we find there. We cannot afford to pander to our own national ignorance about the problems in that part of the world.

For humanitarian, economic, and national defense reasons, the United States must stay the course in this fragile region. I believe that just as the United States cannot walk away from our commitment to El Salvador, neither should we unconditionally and mindlessly pledge our support to those in power there. Our policy toward El Salvador should be characterized by intelligence, moral pragmatism.

El Salvador does not just confront us with the human rights issue. There are economic, political, military and refugee issues that must be faced as well, and I believe that those who would cut off all aid to the innocent because of the murderous sins of the guilty in El Salvador are themselves lacking in humanity.

Those who would abandon the helpless and the hopeless because of the actions of the selfish and the self-serving demonstrate an incredible narrowness of vision and meanness of spirit toward a nation that has surprised the world with its recent support of democracy.

Time is running out. The U.S. Government must decide soon a consistent policy regarding aid to that country. The religious and private sector of this country must also decide what must be done decisively and immediately. I believe that country's economy is collapsing. The numbers of displaced persons grow weekly. Conditions in the refugee camps boggle the mind, and the camps are rapidly becoming the ideological training ground of the enemies of this country.

A quarter of a million displaced El Salvadorans will soon go into a floodtide of refugees flooding northward unless we help those desperate people in their own homeland while we yet can help them.

This tiny country and its young experiment in democracy does not need any more evaluation groups—congressional or otherwise—demanding that the El Salvadoran Government enter into dialog with the Communist guerrillas outside the electoral process. No.

Instead of trying to make the El Salvadorans do what Americans would never agree to do in our own country, we should actively and aggressively help these people. Their economy, their medical professionals, their legal system and church relief agencies all need direct and immediate help. No one I talked to there gave the country more than 18 to 20 months to win or lose its war.

Questions like: Will the guerrillas destroy the economy before the army destroys the guerrillas? Will the refugee problem overwhelm the cities before the countryside can be made safe? These and hundreds of other critical questions can only be answered by aid, intelligent aid, conditional aid, but aid immediately.

El Salvador is not another Vietnam. It is close to us. It is connected to us by a land bridge, and its problems will soon be our problems unless we act now to give hope to the homeless and hopeless in that beautiful country.

Refugee camps dot the country, but the efforts of those who service these camps are touched with genuine desperation. In several camps Green Cross workers told me the refugees were getting only one pound of corn per person per week. These displaced people sleep on the ground in canvas or metal-roofed shanties and use communal out-houses.

In such camps in and around the capital of San Salvador I found hundreds and hundreds of filthy, undernourished children wearing rags or no clothing at all. Many of them suffered from skin diseases, while others were forced to feed and care for still younger children.

The plight of El Salvador's refugee children is symbolic of the plight of the entire country. The aspirations of these children and their country outstrip current possibilities. America must soon expand real possibilities for these people or America will eventually pay a terrible price.

Our organization intends to return to El Salvador with American dollars to help buy El Salvadoran corn, beans, and other farm products to help the refugee children there. By buying as many products as possible inside the country, we hope to help the economy while ministering to the displaced and the homeless. We plan to encourage conservative free-enterprise-oriented businesspeople to take trips to assess the fantastic possibilities of helping that economy.

We intend to teach respect for human life and rights by example, by doing all we can as a private entity to alleviate pain, hunger, and suffering among the victims of the war there.

Men and women pretending to be the liberators of that country are preying on the misery of El Salvador. Violent, lawless terrorists representing both extremes selfishly exploit the poor. Unless and until America opens our national eyes and gives real attention and assistance to this key Central American nation, this exploitation by both extremes will continue. These destructive minorities must not succeed in causing America to default on its duty to the helpless, the homeless, and the innocent in El Salvador.

But precisely because these evil forces are still active there, the United States must continue and intelligently expand its benevolent influence in that country. We must give the new Salvadoran democracy a chance to do what it is supposed to do—to bring the broad variety of factions there into a functioning democratic system.

The region's strategic location on the Pacific side of Central America, El Salvador's proximity to our own southern border, and the human needs of that country all demand the continuation of both U.S. Government and private aid to El Salvador.

I appreciate this opportunity to present this testimony. Thank you, Mr. Chairman.

[Dr. Godwin's prepared statement follows:]

PREPARED STATEMENT OF DR. RONALD S. GODWIN

We are pleased to have the opportunity to testify this afternoon with respect to United States aid policy toward El Salvador.

May I begin by stating the major premise of my testimony, "the United States cannot walk away from El Salvador and Central America."

We cannot walk away or stand idly by and watch El Salvador and the region succumb to massive social, economic and political problems. We cannot afford to pander to our own national ignorance about and sense of revulsion toward Central America's problems.

We cannot allow polarized extremists to destroy all respect for law and order, human life, and democracy immediately south of our borders. For humanitarian, economic and national defense reasons the United States must stay the course in this fragile region. For the sake of life and liberty we cannot walk away.

Since I believe the above premise without equivocation I also believe that the challenge which this committee must face, deals not with whether the United States should aid El Salvador, but rather with what our policy of aid should be.

Just as the United States cannot walk away from our commitment to El Salvador neither should we unconditionally and mindlessly pledge United States support to those in power there. United States policy toward El Salvador should be characterized by intelligent, moral pragmatism. El Salvador does not confront us with just the human rights issue. There are economic, political, military, and refugee issues that must be faced as well.

Those who would cut off all aid to the innocent because of the murderous sins of the guilty in El Salvador are themselves lacking in humanity. Those who would abandon the helpless and the hopeless because of the actions of the selfish and self-serving, demonstrate an incredible narrowness of vision and meanness of spirit toward a nation that has surprised the world with its recent support of democracy.

Time is running out. The United States Government must decide soon what its policy of aid will be. The religious and private sector of America must also decide. What is to be done must be done decisively and immediately. The El Salvadoran economy is collapsing. The numbers of displaced persons grow weekly. Conditions in the refugee camps boggle the mind. And the camps are rapidly becoming the ideological training grounds of the enemies of America. The 250,000 displaced El Salvadorans will soon grow into a flood tide of refugees fleeing inexorably northward unless we help these desperate people in their own homeland while we yet can.

This tiny country and its young experiment in democracy doesn't need any more "evaluation groups"—Congressional or otherwise—demanding that the El Salvadoran Government enter into dialogue with the Communist guerrillas outside the electoral process.

No, instead of trying to make the El Salvadorans do what Americans would never agree to do in our own country. We should be actively and aggressively helping these people. Their economy, medical profession, legal system, and church relief agencies all need our help and they need help now.

No one I talked to there gave the country more than 18 to 20 months to win or lose its war. Will the guerrillas destroy the economy before the army destroys the guerrillas? Will the refugee problem overwhelm the cities before the countryside can be made safe? These and hundreds of other critical questions can only be answered by aid—intelligent aid, conditional aid, but aid—immediately!

El Salvador is not another Vietnam; it is very close to us, connected to us by a land bridge, and its problems will soon be our problems unless we are now to give hope to the homeless and hopeless in that beautiful country.

Refugee camps dot the country, but the efforts of those who service these camps are touched with genuine desperation. In several camps Green Cross workers told

me the refugees were getting only 1 pound of corn per person per week. These displaced people sleep on the ground in canvass or metal roofed shanties and use communal "out houses."

In such camps in and around the capital of San Salvador I found hundreds and hundreds of filthy, undernourished children wearing rags or no clothing at all. Many of them suffered from skin diseases, while others were forced to feed and care for still younger children.

The plight of El Salvador's refugee children is symbolic of the plight of the entire country. The aspirations of these children and their country outstrip current possibilities. America must soon expand real possibilities for these people or America will eventually pay a terrible price.

We hope to soon return to El Salvador with American dollars to buy El Salvadoran corn, beans, and other farm products to help the refugee children. By buying as many products as possible inside the country we hope to help the economy while ministering to the displaced and homeless there.

We plan to encourage conservative, free enterprise oriented business people to take advantage of the fantastic opportunities now available in El Salvador.

We intend to teach respect for human life and rights by example, i.e., by doing all we can as a private entity to alleviate pain, hunger and suffering among the victims of the war.

Men and women pretending to be liberators are preying on the misery of El Salvador. Violent, lawless terrorists representing both extremes selfishly exploit the nation's poor. Unless and until America opens our national eyes and gives real attention and assistance to this key Central American nation this exploitation by both extremes will continue.

These destructive minorities must not succeed in causing America to default on its duty to the helpless, the homeless, the innocent and the hopeless in El Salvador. Precisely because these evil forces are still active there, the United States must continue and intelligently expand its benevolent influence in El Salvador. We must give the new Salvadoran democracy a chance to do what it is supposed to do: to bring the broad variety of factions there into a functioning democratic system.

I believe the United States is reaping what we have sown in Central America, but that we can yet save the region from falling into the hands of communism if we care enough to help these neighbors we have so long ignored. The sickness in El Salvador has not yet been cured, but it can be contained if violence can be controlled and opportunities expanded.

The regions strategic location on the Pacific side of Central America, El Salvador's proximity to our southern border, and the human needs of that country, all demand the continuation of both United States Government and private aid to El Salvador.

The CHAIRMAN. Thank you, Mr. Godwin, very much.

I would like to ask Dr. Stanbury first, referring to your testimony you describe situations of torture of political prisoners. Certification documents state that torture is less common in the prisons. On the other hand, it admits that there are likely abuses of the——

Dr. STANBURY. I am sorry. Could you go back about one sentence?

The CHAIRMAN. I am sorry.

Dr. STANBURY. I did not hear the last sentence.

The CHAIRMAN. The witnesses admitted that there are likely abuses, including torture, between the time an individual is arrested and remanded to prisons. Were your experiences—the experiences that you described in your statement—related to you in the prisons in El Salvador, or by other individuals relating what they had been told of events that took place in prisons?

Dr. STANBURY. Both in the women's political prison and in the male prison we talked at length, and the story was always the same. These people were apprehended, blindfolded, taken to houses of detention which might be at one place or another in the city, and were kept for

1 week to 8 weeks, during which time they were interrogated, tortured and then were brought to the prison.

After they got to prison, these things did not often happen. These were events that happened between apprehension and removal to the prison.

The CHAIRMAN. Did you have representatives of the United States Embassy or the Salvadoran Government present during your interrogation of political prisoners?

Dr. STANBURY. No, sir; our delegation was alone, so far as we could tell.

The CHAIRMAN. Dr. Gellhorn, what percentage of the Salvadoran medical profession do you believe have left the country as a result of violence over the last several years?

Dr. GELLHORN. It is very difficult to estimate that, but at least in terms of the medical faculty, this has been depleted, I think, at least 30 percent. There are no basic science-medical faculty that are left at the present time. They have either disappeared or have left the country.

The CHAIRMAN. I will come back to you, Dr. Stanbury.

You spoke with representatives of the International Red Cross while in El Salvador. Do they corroborate the same tragic story that your group reports in its document? Do they corroborate that?

Dr. STANBURY. Unfortunately, it was another member of our delegation who visited the Red Cross. Dr. Gellhorn might perhaps speak to that question.

Dr. GELLHORN. I do not know what the question was. I do not know about your question about the International Red Cross. We did speak to them at length and we learned from the International Red Cross that they visited the prisons at least twice a week without anyone in attendance to determine what has happened with regard to the prisoners.

They also attempted to provide medicine to the prisons, not just the political prisoners. Particularly of interest to us was to attempt to determine their function in the training of the military personnel in the area of human rights, and this we pursued with their Geneva headquarters, and we find that they do this, both with regard to the Government's military forces and the guerrillas.

Their feeling was that despite—this was from the International Red Cross representative in San Salvador—that despite the terrible things that were going on, despite the fact that they had threatened to leave El Salvador in July 1982 because of the Government's policy of not taking prisoners, that on balance the ICRC feels that they are making a contribution toward improving human, decent behavior and have decided to set review in the country.

Mr. SCHELL. Mr. Chairman, isn't it true that the International Red Cross, by and large, does not make reports? It, rather, goes and satisfies itself and that is one of the conditions that get it into so many countries other than Guatemala.

Senator PELL. They make a report always to the receiving government but no other government.

Mr. SCHELL. Yes, that is right.

The CHAIRMAN. Thank you.

Three of you—Dr. Stanbury, Dr. Gellhorn, and Mr. Godwin—have all made inquiries of one kind or another into the service delivery in a displaced persons' camp around San Salvador. Dr. Stanbury's description of conditions there is a particularly disturbing description.

I would assume all of you share that, unless I hear to the contrary. Could each of you comment on what your recommendations are for improving conditions in those camps?

Dr. Godwin?

Dr. GODWIN. I have been to the State Department and to the Agricultural Department in the last several days working with various officials there to find out the legal procedures for getting our U.S. commodities to the refugee camps, particularly dairy products. And I have found a lot of cooperation. I think that these logistical problems can be overcome.

The El Salvadoran Government is broke and I have been told by Government leaders and by the church officials and by relief agencies, all, that no real help is forthcoming in that direction. So, as we talk here, there are some 10,000 children in these refugee camps and 250,000 displaced persons who need food today and tomorrow and immediately.

They need clothing. They need the most rudimentary shelter. I myself believe that the private sector must materially increase our interest and our concern for these people, regardless of their ideology and regardless of their politics.

We found the conditions in these refugee camps to be deplorable—I mean, beyond description—and I have been over much of this world and visited Hong Kong and other refugee camps in the Far East and what is there on central standard time, 2 hours out of Miami, Fla., boggles the mind. Regardless of who is to blame, we have a dire responsibility, I believe, to help these people immediately in direct and immediate ways.

I found the Green Cross, the Red Cross, the Catholic Church, Save the Children agency, and our own mission from our U.S. Embassy very active in doing what they could. And what is being done is barely a survival type of activity, and that is my basic assessment and that is the reason for my urgency in trying to turn around and go back as soon as possible with significant relief.

The CHAIRMAN. Thank you very much. Do any of you want to comment?

Dr. STANBURY. It seems to me, sir, it is very important for this Government to lean as heavily as possible on the Salvadoran Government to permit aid to come in through voluntary private organizations.

The document I have here from USAID in San Salvador indicates about \$10.8 million spent in humanitarian services in San Salvador during the year 1982. That seems like a rather large sum, and yet we found virtually no evidence of those expenditures in the refugee camp we visited, which is virtually in the center of San Salvador. I was puzzled by that discrepancy.

The money that goes in through AID is bilateral money, which means it is government to government. I would like to know how carefully the expenditures are the AID expenditures in San Salvador for humanitarian services monitored.

In all events, I certainly agree with my colleague at the right end of the table that we need to invade El Salvador with massive humanitarian assistance.

The CHAIRMAN. You would go along with that, Dr. Gellhorn?

Dr. GELLHORN. I would merely add to that, sir. In addition to the food, they need medicine. And based upon my experience in talking to the International Red Cross and the Catholic Church, they can find the means of getting that to them. Furthermore, if there were assurances of safety, I feel very confident that medical and other health personnel would welcome the opportunity to aid in the care of refugees and others.

The CHAIRMAN. Mr. Messing, just one last question, a quick one, to you. You made a very interesting proposal, that if one forced the extreme left to lay down their arms immediately, without conditions, and operate in the existing political structure, if you force them to do that, how do you go about doing that? How would you implement your proposal?

Mr. MESSING. Well, sir, I think back a few years ago with the Rhodesian situation. The clamor by Congress and the international media wound up forcing the terrorists in that situation to lay aside their guns, to wind up involving themselves in the second Rhodesian election, and this is the context I bring this suggestion in.

This, along with the fact that we have to—like these gentlemen already outlined—we have to bring in massive amounts of economic aid through governmental and private means, and we have to provide for the security of the people so they can go back into the countryside.

The CHAIRMAN. I was going to put a question to Mr. Schell, but maybe you would want to comment.

Mr. SCHELL. I would just like to join my colleagues and agree thoroughly that aid other than military aid should go to countries like this. This has been our heritage. But let's not let any of it stick to the fingers of the colonels.

As far as the guerrillas are concerned, I agree with my friend on the left that violations of human rights by guerrillas are just as bad as violations by government. But what this committee is considering today is whether we shall give military aid to the government, and the criteria for giving that aid is whether they are abiding by the basic international human rights.

I submit, sir, again, that on the basis of the report by the State Department itself they are not living up to those commitments, and I said in my closing remarks, you could not balance human rights with geopolitical considerations up to a point. By that I mean you cannot tolerate torture and murder and such things as that.

You cannot derogate from those basic principles. You can have an antiterrorism act that has due process protections within reason. You can, I believe, curtail public assembly for a time. You can curtail public speech, but you cannot murder and torture people, as Dr. Gellhorn has described, and we know that is what is going on.

The CHAIRMAN. Mr. Messing, a brief rebuttal?

Mr. MESSING. No, sir, no rebuttal. I concur. We cannot allow our particular efforts to be denigrated by any evil acts on the part of either the government or the terrorists. But the fact remains we have to look

back to history in 1974 when we started constricting aid to Indochina. We caused a panic in Indochina.

Think back to 1975 when Congress restricted economic and military aid to Cambodia. It went down the tube.

The CHAIRMAN. Thank you very much.

Senator Pell?

Senator PELL. Thank you, Mr. Chairman.

Am I correct in that each one of you would agree that torture occurs in the detention houses prior to prison, but that once in prison there is scarcely any torture? Would there be any disagreement?

Dr. GELLHORN. Yes.

Dr. GODWIN. I made no comments about torture. I have no direct information one way or the other about it. I am not trying to argue the point. I am just simply saying that I have not commented on that subject.

Senator PELL. Then the criteria that are used, to which Mr. Schell referred, says, one, that the Government of El Salvador is making a concerted, significant effort to comply with internationally recognized human rights and, two, is achieving substantial control over all elements of its own armed forces so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens by these forces.

These are the criteria that we follow, although even if these criteria were not followed technically the Congress would still be at liberty to extend military assistance to this regime. But these are sort of the guidelines that were adopted.

I was puzzled this morning when the administration showed where the Catholic Legal Aid office had shown a steady decline in the number of deaths, and I asked the administration witnesses if the reason for that was that they ran out of conspicuous enough people to kill, or if there were some other reasons for this decline.

Would any of you have any comments on that? Mr. Schell?

Mr. SCHELL. Senator Pell, I would only comment that if you take the State Department's own figures of 200 murders a month, you would find that in relation to the population of El Salvador today that that probably is the greatest number of murders going on in the world.

If you take the average of 39 kidnappings, which are the figures of the State Department, 39 per month on the average in 1982, you will find when you relate those to the population of El Salvador that they equate with Argentina at its nadir of kidnapping and disappearances. And Argentina as you know, is it when it comes to disappearances.

The CHAIRMAN. Mr. Messing?

Mr. MESSING. Sir, the fact remains that while these statistics are computed, they are not quite sure if all of these atrocities—alleged atrocities—are perpetrated by the right-of-center elements, and I think that is something you should talk about. They are also, you know, done by the left, and that is the premise that I brought up to begin with.

These human rights violations are occurring broadly by the left and, you know, we do not have a certification process on them. We are only having a certification process on the Government and the right-of-center forces.

Now, I understand where we have to pay attention and we have to force politically every step of the way, that our aid and help is utilized in a cogent and Judeo-Christian fashion. I understand this, but I just say that when we start throwing out statistics about 200 being kidnapped and murdered and everything, let's talk about exactly what we mean.

Senator PELL. Well, to follow that up, that is a good point. Wouldn't I be correct in saying that those who are knowledgeable or have spent some time there would generally concur that from a third to a quarter of the atrocities are committed by the guerrillas, the left, and two-thirds to three-quarters by the Government forces? Would that be a rough rule of thumb that would be acceptable?

Mr. MESSING. Not at all, sir.

Senator PELL. You would not accept that? What would be—

Mr. MESSING. Let me just go back to a point. The person in the U.S. Embassy that compiles these statistics that this gentleman was referring I have talked to at great length. And he freely admits that they just take every unaccounted, unsolved type atrocity/murder and they throw it into this statistic. You know, this is what we have to be mindful of, that while we can, you know, throw out these type of statistics, I contend that we are not just talking government atrocities and atrocities of the right.

We are also talking about the left, and I deplore the human rights violations that are being perpetuated by the Communists.

Senator PELL. I just said would you agree or disagree with the proportion. What would be your estimate of the proportion?

Mr. MESSING. Well, sir, I think that one of our Embassy people should be asked to address that particular question, along with probably the military advisors down there.

Senator PELL. I put that question to the Embassy, and there is a general concurrence on the part of most people that this is about the ratio—two-thirds to a third, or three-quarters to one-quarter. Give me your estimate.

Mr. MESSING. I would say that it is probably a higher ratio on the left side.

Senator PELL. Dr. Gellhorn?

Dr. GELLHORN. I think, Senator, it should be appreciated that the figure that the Embassy had must be very suspect. Where do they get these figures?

When we were in San Salvador, we were able to determine that families of disappeared persons went to two sources. One, they went to the Catholic Church and reported this, and the Catholic Church keeps statistics in San Salvador. They also went to another human rights organization which, with enormous courage, goes out every other day to various body dumps to take pictures, and I have some of these with me, for purposes not of alarming—they do that—but for purposes of identification of disappeared people.

And from the Catholic Church group where we asked specifically about this, they have a perfectly constant per month level in San Salvador of between 60 and 70.

Senator PELL. When you say "body dump," is that the phrase that is used?

Dr. GELLHORN. That is the phrase that is used in San Salvador.

Senator PELL. That is even worse than the infamous "body count" we used to use in Vietnam.

Dr. GELLHORN. This is called "body dump."

Dr. STANBURY. Senator Pell, I just wanted to say something that I think my colleague on my right would agree with, and that is that all of these statistics are extremely soft, and the softest statistics are those that come from the insurgent side and it is hard for me to know how we have any information, any credible information, as to what, if any, atrocities are committed on the insurgent side.

If I may be permitted just one moment to say another thing. I have heard all day long an equating of the people on the insurgent side with leftists, Communists, Moscow-dominated, Cuba-dominated individuals. I am not sure this is true at all. At least the physicians that we interviewed—and they came from the top levels of the Salvadoran medical-academic community who are now living in exile—led me to think that they are far from being Communist. They are centrists. They just simply found that they could not continue to operate under the system that was in existence a year or 2, or 3 years ago. I certainly do not think that all the guerrillas are Communist. They freely admit that there is an element of the far left in the coalition of insurgents, but they told us that this was a small fraction of the insurgent side.

Senator PELL. I think Mr. Schell wanted to respond, and then my time is up.

Mr. SCHELL. Senator Pell, I have not taken any affront to reference to left wing people because I know and my colleague on my left knows that I am a stuffy Wall Street conservative lawyer, but my information is that Tutela Legal and Socorro Juridico, which are the two organizations referred to by Dr. Gellhorn, believe that between 90 and 95 percent of the murders are attributable to the government forces.

And, as Al Smith says, let's look back at the record. The State Department says there were not more than 200 on the average a month. In the end of their document, they say, but really these figures are higher. I have been basing my remarks on bedrock bottom figures. The two organizations to which I just referred believe—and I have every reason to believe they are right—I think there are 500 a month.

But I am basing my whole thing on the State Department. They are not left wing—at least I do not think they are left wing. And, certainly, their figures ought to be taken as the point of departure.

Senator PELL. Thank you.

The CHAIRMAN. Thank you, Senator Pell.

Mr. Schell, the report by the American Watch Committee, the American Civil Liberties Union Committee, tend to assume that all deaths not absolutely assignable to guerrillas are probably government responsibility. I wonder if you have questioned the validity and assumptions of your own accounting system.

Mr. SCHELL. We do question, Senator Percy. We do question all of these assumptions. These figures come from the two sources to which I just referred and which Dr. Gellhorn spoke of, and you can take the spectrum from 1 death up to 1,000, I suppose, and there is a point at which deaths become de minimis.

But I have to go back each time and say that my point here is based on a bedrock figure which is submitted by our friends over in State.

The CHAIRMAN. The figures you give say 2,000 civilian deaths in the last 6 months, only 20 of which can be attributed to the guerrillas. In the midst of a guerrilla war that seems rather incredible.

Mr. SCHELL. I think it does, and I would bet my shirt that both the figures on the government side and the figures on the guerrilla side are low. We do know, however, at least we think we know, that the guerrillas do indeed violate human rights and commit murders. They are generally categorized under the words of "selective murders." They will go in and pick off a few people but are not as guilty of the wholesale types of things as the government forces.

The government has a policy. The guerrillas are fighting a war. I do not think they have the same kind of policy. I do not hold a single breach for the guerrillas. That figure could well be low, sure, and I understand this morning there was a suggestion that if certification is to be modified that there be a provision for reporting on guerrilla atrocities, and I think that was offered by Senator Helms.

I am sorry he is not here, because for once in my life I would like to agree with him. I think it is a great suggestion. On the other hand, we have to remember once again that what the guerrillas do is not relevant entirely to the question we are after. It is relevant to the extent that my good friend on my left points out, that they create havoc and, therefore, lack human rights.

But we are talking about supporting something. Shall we or shall we not support something? And we have got to look at those figures and I do not think that the guerrilla figures are relevant on that point entirely.

The CHAIRMAN. I would like to just pursue one further aspect of that and then, Mr. Messing, I believe you want to interject a thought.

You came to the conclusion that the human rights situation in El Salvador is worse than ever now. That would then mean we would not be meeting any standard of progress, even though it may be slight. And yet the Salvadoran Government figures for nonpolitical violent deaths in the period before 1975 ranged around 3,000, approximately 250 per month—somewhat more than the current rate reported by the U.S. Embassy, somewhat less than the figures reported by Salvadoran human rights groups that you cited in your own document.

Does this historical figure not raise a question with you as to the validity of your contention that the human rights situation in El Salvador is worse than ever before?

Mr. SCHELL. I think it could.

The CHAIRMAN. Is it worse than last year or the year before?

Mr. SCHELL. The trouble is, we get into the whole question of the body count, which we had in Vietnam. If a guy goes out and murders five people on the sidewalk today and two people on the sidewalk tomorrow, is he getting any better? He has done seven. It is cumulative. He has done seven, and I think it is the cumulative figure we are talking about.

Dr. GODWIN. Senator, I could not get any empiricism that satisfied me regarding body counts while I was there, and I asked that question repeatedly. And I did not find counts that stood up to much analysis, so I asked all the various factions this question repeatedly. Since the elec-

tions in March, is violence on the decrease, is violence on the increase, is it safer or is it less safe? I tried to get those kinds of assessments from people who disagreed with each other on almost every subject.

And the one common answer I got from many divergent groups is that violence is on the decrease, that the murders are down. The senseless brutal killings are less. I talked to ABC camera crews who go to the same dumps and look for dead bodies on a regular basis. They say there are less bodies there to film and that definitely the counts are down.

Now I am not justifying one murder—I will not spend time with that—but I will point out to you that whether I was talking with union leaders, army officers, wealthy landowners, members of the U.S. military advisory team, whomever, there was a general assessment that that country has been encouraged by its success at the voting booth and that violence is down and that the country is safer than it was a year ago.

That is the only assessment that I can bring back that I have any confidence in. Numbers of counts do not seem to withstand much analysis, whether either side gives them.

The CHAIRMAN. I have one question for each of you, if you could confine the answer to about 15 seconds, and then we will leave the record open so you can expand on it.

But I would like to turn to the criticism that has been leveled against the U.S. Embassy's proconsular role, in El Salvador. I really feel that our Ambassador and his staff have played a heroic role in this country and they have done it under extraordinarily difficult circumstances, and yet they have had some success in achieving forward movement at very important times.

Nevertheless, there are some who still think that the United States should just pull out. I have constituents who really feel very strongly, and they are very highly respected people, and they think we just ought to get out, disassociate ourselves completely.

What would happen, in your judgment? What would be the consequences for El Salvador and for the United States if we did abandon the present Government at this time? We will just go from left to right—I am not sure that is the right ideological sequence that we are selecting here.

Dr. GODWIN. I will try to answer you as objectively as possible, Mr. Chairman. I found our Ambassador to be a very wise, very candid, very firm man. I was much impressed with him. We attended a dinner that he cohosted and there were many leaders of the country at that dinner and several of them tried to present a somewhat whitewashed story of the conditions there. The Ambassador called them to task. He spoke very firmly and openly about the atrocities and the murders.

And yet he spoke very clearly about the great improvements that have occurred in the last year. I think he is a very experienced, a very able diplomat who is doing a superior job under very trying conditions. I believe whether or not he is lifted out of that country from the roof of the Embassy by helicopter in 18 or 20 months will be decided by whether or not the United States intends to stay the course.

The CHAIRMAN. Thank you. Mr. Schell?

Mr. SCHELL. I think the job of an Ambassador in any one of those countries is a lousy job. I also have had nothing but, at the bottom line, good reports about Mr. Hinton. There are times, obviously, when

we all disagree with him, but I would agree with my friend on the right. Just reading his speeches you see that he is objective and he has sent material to our State Department with caveats that sometimes they have not respected.

As far as pulling out of the country is concerned, I think I have already said I would not be in favor of that. I would be in favor of a proconsul with economic, health, educational types of aids. I think El Salvador is bringing itself up. They are about 500 years behind. There is going to be some God-awful catacyclism there. I cannot tell whether they are going to be moderate or left or right when that happens, but I do know that we as a country are not enhancing our image throughout the world, nor are we improving our muscle in arguments with the Soviet Union on human rights by befriending a government that does the things this government does.

The CHAIRMAN. Thank you very much. Mr. Messing?

Mr. MESSING. Sir, I think Mr. Hinton is a 1,000-percent improvement over the previous Ambassador and I would just like to say with regard to what can happen in the future, if we do not stay involved basically I keep referring to history. Well, I referred to September 10, 1962, when a very wise Senator made a statement that had to do with the—he addressed the root of the problem, which in this case is Cuba.

He said the massive buildup of Soviet arms in Cuba constitutes a threat to the security of the United States and of the Western Hemisphere. He is talking about basically what is going to occur. And he goes on to say that this buildup must be regarded as an act of aggression and as a prelude to further aggression. It is an act of Soviet aggression against the people of Cuba in the sense that it endows the quisling tyranny with greater military power to keep them in subjugation.

It is a prelude to further aggression in the sense that large shipments of Soviet arms, which have already been unloaded in Cuba, are now being transshipped through clandestine routes to Castro-like movements in other Latin American countries—this guy is forecasting what is going to occur—some of which are already openly fielding guerrilla forces. And that was his father who said that.

I agree 100 percent with his father.

Senator DODD. Like father, like son.

Mr. MESSING. Not exactly, Senator.

Senator DODD. I think I knew him better than you did.

The CHAIRMAN. Dr. Gellhorn?

Dr. GELLHORN. Mr. Senator, if you had asked me a medical question, I would be happy to respond with some degree of confidence. I am not a political scientist. Therefore, my comment is, No. 1, I answer as just a citizen. No. 2, I do not think, as has been suggested, that the security of the United States of America is threatened by El Salvador, a country that is somewhat smaller than Connecticut, with a population of between 4 and 5 million, many of whom are very malnourished and the mean age is around 21.

Finally, I would like to report to you a comment made to us by the director of the church legal aid—Tutela Legal—who is very familiar with what is happening there. This woman, referring to U.S. military aid, said, "Get out. Get out. Let us solve our own problems."

My feeling would be that I think that our aid should be in the form of food and medications and other things to help improve education.

Dr. STANBURY. I can only echo that, sir. I think we should not get out of El Salvador. We need to get into El Salvador more, but with humanitarian services. It is my personal opinion and that of my committee that we can impede that process by no better means than by continuing military aid to the country, and that by pulling out our military aid we might have some chance for reconciliation, because our military aid is simply polarizing the country farther and farther.

The CHAIRMAN. Thank you very much. I have completed my questioning.

Senator Pell?

Senator PELL. I defer to Senator Dodd.

The CHAIRMAN. Senator Dodd?

Senator DODD. Thank you, Mr. Chairman.

I apologize to the panel for being late in getting over here. We had 4 hours this morning, and I will not say what I did. But Senator Percy described what we had to do at the end of the last session.

But at any rate, let me ask all five of you if you would or would not have certified based on the information you had before you to peruse or to study, would you have certified or qualified, if you will, some areas, yes, and others not?

And we will start at this end.

Mr. GODWIN. Yes; I believe that we have to approach the country with a sense of moral pragmatism. We cannot lose that country by default; that if we do not settle that country's problems there now, we will settle them inside our borders later. So I would maintain our presence there, and I would certify with conditions.

Mr. SCHELL. Senator Dodd, I would under no circumstances certify. I am a lawyer. I believe in following the law. I am not a strict constructionist, but I am a pragmatist. But look at what the State Department tells us in their report.

I would repeat once again that I would, with all my colleagues here, agree that medicine, food, education, those types of things should go in but not military hardware or any other kind of military assistance.

Mr. MESSING. Senator Dodd, I would certify with the condition that there be a certification review again at the appropriate time, 6 months, 1 year from now. I think it is important, the work that this committee does, in terms of reviewing how our assistance to this country is viewed. I think it is important that we continue a certification process and expand it out at appropriate times in terms of the length.

Somewhere along the line we are not going to continue the certification of El Salvador should they, you know, get better and better in their behavior, human rights behavior and in their general conduct. But I would certify with the condition that we continue certification.

Mr. GELLHORN. I would respond, Senator Dodd, with the understanding that I am not speaking in any way, shape or form for the organizations which cosponsored our trip, for we have not reflected on that. In fact, I think they explicitly do not wish to take a position.

My personal one is that I would certify but very conditionally, and the conditions would be as indicated by Mr. Schell. They would be for those things that are for life, not for death.

Mr. STANBURY. My committee certainly would not vote for recertification for military aid, but they would encourage a massive increase in humanitarian services and pressure from this Government to political reconciliation in the country.

Senator DODD. Let me just do the same thing with the panel, if I might. If you were here this morning you heard Senator Kassebaum and several others talk about the possibility of not doing away with certification, but rather going beyond certification in terms of trying to see if we cannot achieve what apparently everyone seems to believe is the only way to resolve the problems in El Salvador, and that is to move this from the battlefield to the diplomatic field, if you will, or political field.

Would any of you or all of you like to give me some sort of an idea on what you think we might do to move into that field, and how we might go about doing that. Again, I will start at this end. If you do not have any ideas, we can just move on to the next person.

Mr. GODWIN. That has never stopped me from talking, Senator.

Senator DODD. Did you ever serve in this body?

Mr. GODWIN. I do have an idea about that subject, though. I asked a number of different parties about the dialog, as it is being called down there, and no one that I talked to wanted to enter into dialog outside the electoral process. I do not believe in negotiating with people who hold a gun at my head. I do not believe that any Senator or Congressman would ever suggest that we do that here in this country. And I do not know where we get off suggesting to the El Salvadorans that they enter into a dialog or a negotiation with people that are holding a gun to their head.

And I believe that the way to enter into dialog is to invite the leftist guerrillas to enter into the electoral process and not outside the law, not outside the electoral process.

Mr. SCHELL. I would just note that the guerrillas have been excluded from the electoral process, so that would require some pressure.

Senator DODD, the first thing I would say is I would get away from what seems to be the age-old thing that we send guns, tanks, and so forth, and that solves everything because the Communists are out against us. Maybe they are.

When I was in Guatemala in October I talked to a very wise man whom I am sorry I cannot identify, but he was quite high in the government, and he spoke very frankly. He said the only solution for Central America was to try to use the good offices of the region to bring all the countries of that region, including Cuba, around the table for negotiation.

Perhaps one does not have negotiations with the guerrillas, per se, but if, as has been alleged here today, they are backed by Cuba, like Nicaragua and other sinister forces, let us get all those forces together. This man thought he had the means of doing it. He had proposed it to Rias Montt. Rias Montt has turned it down. There has to be some way to create a willingness on the part of these people who are running these countries, the people who represent the 2 percent of the population that controls 80 percent of the land, there has to be some way found to persuade them that an overall solution in the area is needed.

And it seems that this country without being ugly Americans somehow can do it. My ideas fail there, sir. I am not serving in the Senate, and probably it is just as well that I am not.

Mr. MESSING. Well, sir, I concur with Dr. Godwin's remarks, and I would just like to add that you take a quick look in the history again. Negotiations that we have entered into, have been a part of, or encouraged people to go through, have wound up proving dismally unsuccessful. And I would say that if we wind up forcing the Government of El Salvador into a negotiation syndrome that they had better be wary of history.

Mr. GELLHORN. Senator, it was my recollection that when you were last in San Salvador the patriotic women of San Salvador were very vehement that they did not wish to have any negotiation. The patriotic women represent a very specific segment of the population, namely they are the wives of the affluent and of the military.

I would feel that it would be very foolhardy for the United States to attempt to inflict negotiation as an external power. On the other hand, in collaboration with the rest of both Central America and components of Latin America and elsewhere, it would seem to me that this must be done if we are going to get a solution.

Mr. STANBURY. The physician-academician members of the FDR that we talked to in Mexico City were very explicit in saying that they wished to have negotiations, but they did point out that the government's position that the FMLN lay down its arms as a condition for negotiation without offering to lay down the arms of the military group in the government is something you could not expect them to do. Such a complex issue has to be approached incrementally. You cannot suddenly have full democratic process in the country that is so politically fragmented and polarized, with all sides represented. It is going to be a long, hard struggle, but we have to start.

I think they have to start talking, perhaps outside the country, at some neutral spot—Costa Rica, for example, with some neutral observers from Venezuela and Mexico, as those countries have suggested.

Senator DODD. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Dodd, very much.

Senator PELL.

Senator PELL. Thank you.

I just have one simple, specific question as a followup on the chairman's question, and that is, what would happen if military assistance were turned off? What would you think, Dr. Godwin?

Mr. GODWIN. My assessment is that there is a fairly close balance of power at the present time. The military assistance we provide that country is incredibly basic and rudimentary and old. I traveled in a U.S. helicopter that had to have one blade taped together with Congressman Phil Crane, and each place we stopped the pilot got out and searched among the people at that base and asked them if they had any tape, and it did not fill me with a great deal of confidence each time he returned without finding that tape. They literally were taping the blade to this U.S. helicopter each time we stopped.

Senator PELL. Well, excuse me. My question was what would happen if we stopped the aid?

Mr. GODWIN. Well, I am pointing out to you that the army there is not better equipped or significantly better equipped than the other side. If we stopped equipping the army, stopped the military assistance, I think that very quickly the other side would gain a significant, overwhelming strength and would soon prevail in the country.

Senator PELL. Mr. Schell.

Mr. SCHELL. That is kind of a tough question, but it is fun sitting here playing foreign policy.

It seems to me that there is a darn good chance that the guerrillas could win. You cannot ignore that. Those armies are certainly nothing like I have ever seen before, and it is very hard to evaluate them. I suppose if it is true that the guerrillas are getting assistance from the Cuban, Nicaragua and other sinister forces that those would continue if we gave ours up, if there was some way we could isolate the country militarily. And the only way you can do that is to go back to Senator Dodd's question and get a global Central American-Caribbean settlement. It seems to me that it just leads you inevitably to that before you have a guerrilla victory.

Mr. MESSING. Sir, in an irregular war, to go back to the early 1950's, Magsaysay wound up breaking the cycle of insurgency warfare by doing two things: One, securing the countryside, and two, providing economic assistance. They are hand in glove. We have two things. Terminating military assistance means essentially we have washed our hands and walked away, and that country will wind up falling. There is just no doubt about it.

My suggestion would be as long as we are having fun here playing foreign policy is that you have to have a hand-in-glove approach, that military aid should be keyed toward an irregular war, not a quasi-conventional conflict like they are conducting the war right now. And then you have to have an infusion of not only U.S. Government aid, but also encourage our private industry, like we discussed before, to go in there and wind up helping these people. But to terminate military aid, you terminate the free country of El Salvador.

Senator PELL. Well, rather than falling, as you put it, it might be a phoenix that might rise and create a government that would have popular and general support. Only time can tell.

Dr. Gellhorn.

Mr. GELLHORN. Senator, I am surprised with the unanimity of my colleagues on the panel that the rebels would win. As I read the figures in the paper, there are 500 guerrillas or rebels that have taken Berline and 1,500 military, the government forces. It does not sound as though they are so overwhelming as all that. I do not know. But if they are right, it does suggest that maybe the sentiment of the country would be in favor of the so-called insurgents.

Senator PELL. Dr. Stanbury.

Mr. STANBURY. I would follow Dr. Gellhorn's logic. I am not an expert in what would happen if we ceased military aid. My suspicion is that the war would just go on unless we can find a way to get the judicial system back in order and to get some humanitarian services into the country in order to take care of some of the deprived people that we have seen. I do not know what would happen, but I expect

in the long run El Salvador would be far better off without military aid.

Senator PELL. Thank you very much.

The CHAIRMAN. Thank you very much. And I thank the very distinguished panel for being with us today. We have benefitted greatly.

Our next panel will be the panel on the political environment: Mr. Richard Araujo, Prof. Enrique Baloyra, Mr. Arnaldo Torres, and Dr. Howard J. Wiarda.

If we could start with Mr. Richard Araujo. Mr. Araujo, we welcome you from the Heritage Foundation, a very distinguished foundation in Washington, D.C.

**STATEMENT OF RICHARD ARAUJO, THE HERITAGE FOUNDATION,
WASHINGTON, D.C.**

Mr. ARAUJO. Thank you, Mr. Chairman.

The CHAIRMAN. And once more, if you could be as precise as our first panel was. Each did finish within the 8-minute limitation. It gave us much more time for questioning.

Thank you.

Mr. ARAUJO. Thank you. I will do my best.

Mr. Chairman, I very much appreciate this opportunity to discuss the Presidential—

The CHAIRMAN. Could we have silence in this room, please? Anyone engaging in conversations can leave this room and have them out in the hall.

Thank you.

Mr. ARAUJO [continuing]. Certification authorizing continued assistance to El Salvador. I have dealt with the five items of the certification in detail in my written statement. The focus of my attention will be on the overall complexity of the political situation.

The issue of certification certainly necessitates a review of the evaluation process in El Salvador. From my perspective, however, undue emphasis has been placed on the quantitative aspects of human rights violations, while insufficient attention has been paid to the overall effects of the violence on the people as a whole.

I recently visited El Salvador with the hope of obtaining a better understanding of the situation there and the effects of the U.S. involvement in that country. I found the situation in El Salvador to have grown even more complex than it was a year ago.

Certainly there has been progress in several of the areas required for certification. However, there are many other areas and issues that are equally as important but because they have not been included in the certification requirements, they have gone virtually unnoticed.

The CHAIRMAN. Could I ask whether you mean unnoticed or because they were not in there, nothing was being done about them?

Mr. ARAUJO. Because they were not emphasized in the certification process they have not been brought forth.

The CHAIRMAN. They have simply not been given the attention.

Mr. ARAUJO. The attention.

The CHAIRMAN. Which really is an endorsement of the process, though it has been too limited in scope.

Mr. ARAUJO. Yes.

The CHAIRMAN. Fine. Thank you.

Mr. ARAUJO. If U.S. assistance is meant to help and improve the Salvadoran way of life, then it is incumbent upon us to help Salvadorans fashion a lifestyle that they themselves wish and choose, rather than one that suits only our standards.

El Salvador is presently experiencing the growing pains of democracy; it would be unwise and premature to pass judgment now. Certainly, human rights violations should be a major concern of all observers of the Salvadoran situation. Unfortunately, politics and passion often cloud the issue and distort discussion.

The argument for cutting off aid to El Salvador is based essentially on the human rights violations supposedly perpetrated by government-related forces. It has, however, never been proven that U.S. assistance in any form promotes those violations, nor has it been proven that the government, which is benefiting from that aid and with whom the United States has an agreement, is ordering those violations to occur.

Consideration is also not given to the proposition that human rights violations would increase if the aid were cut off. It is naive and irresponsible to think the government will have a better chance of settling the issues once the United States has pulled out of El Salvador, especially when the government has no leverage to extract Cuban and Soviet personnel from the conflict as well.

In the area of the elections and political solutions, substantial progress has been made in the development of the political democratic system. Democracy is in the development stage in El Salvador today. Efforts to push the Salvadoran Government to make quick, radical changes could easily backfire and turn the political opposition forces even more against the government, thus leading to an even greater degree of polarization in El Salvador. Such a move could be a prelude to a tragic and bloody civil war.

On August 3, 1978, leaders of the three parties represented in the assembly signed a document called the Pact of Apaneca, which outlined a unified stand within the ruling coalition. The pact includes a call for consolidation and perfecting of the agrarian reforms, a concerted effort for the reduction of human rights abuses, and a commitment to defeat the leftist rebels, as well as a guideline for presidential elections.

The pact dictated a program of immediate action for the establishment of three commissions: A peace commission, a human rights commission, and a political commission. I refer you to appendix I in my prepared statement.

Priority was given to the formation of the political commission, and a deadline was set for September 30 for the following agenda items: Appointment of a new central electoral council; drafting of rules and regulations for the electoral process; municipal elections; presidential elections; and the transfer of executive power by the present interim regime.

The political commission met the deadline and announced the formation of the central electoral council and the scheduling of presidential elections for March 1984. With the political commission in

place, the other commissions—peace and human rights—were launched. These commissions are functioning under a government of national unity amid economic and political turmoil caused by violence.

The government survived its first political test in the annual reshuffling of cabinet positions. President Magaña faced protests on the changes of new ministers from all quarters, including assembly president Robert D'Aubuisson. This action on the part of Mr. D'Aubuisson cost him the support of his rightist center coalition; the PCN and the Democratic Action Party. In turn, the Christian Democrats formed a new coalition with AD and PCN. To accuse the government of being a rightist government dominated by D'Aubuisson ignores the historical facts and impugns the actions of the other political parties.

The recent dispute and insubordination of Colonel Ochoa, his refusal to accept an overseas post, and his demand for the resignation of Defense Minister Garcia were resolved in a manner unlike past military history in El Salvador. This divergence from the old way was especially evident when the President had the chance to play a major role in the solution.

The dispute was basically over different technical interpretations of the war against the insurgents put forth by the high command and the officers in the field. It was not a power struggle. Although Colonel Ochoa's behavior was not acceptable military conduct, it was necessary to break what was perceived to be a military stalemate in the progress of the war.

The positive settlement of the dispute demonstrated the level of maturity of the armed forces, as well as their willingness to allow intervention by a civilian in power. Certainly, these actions must be considered as progressive in furthering the cause of democracy in El Salvador.

On the question of dialog, the peace commission is studying ways for a peaceful solution to the conflict. It is reviewing the present amnesty plan, which was instituted by the government prior to the 1982 election campaign. It is also considering the question of dialog with the opposition forces willing to participate in the March 1984 elections.

Peaceful, honest elections have been scheduled for no later than March 1984. The central elections commission is coordinating the plans for the elections. The peace commission intends to promote participation of all parties willing to forsake violence. A dialog with the guerrillas is one of the ways likely to result in a peaceful, political settlement, if the guerrillas are willing to respect and participate in the democratic system in place.

A January 9 interview in the Nicaraguan newspaper *La Prensa* quoted Cuba's Premier, Fidel Castro, as saying, "Guerrillas cannot win in El Salvador." He charged that the situation in El Salvador "can only have a political solution, and it is the United States which is systematically opposed to this outcome." He added, "I can confirm that the revolutionary forces in El Salvador are ready to negotiate," warning that "only they—Salvadoran revolutionaries—can decide the path which is most convenient."

Congressman Stephen J. Solarz' remarks on January 16 in El Salvador seemed to echo Premier Castro's remarks when he said, "The only way to bring the war to an end is through negotiations."

Congressman Solarz added that the certification legislation should be rewritten to halt military aid unless the governments stops the murder of civilians by death squads.

Congressman Solarz does not demand that the guerrilla forces stop slaughtering innocent civilians. Nor does he consider that the government does not recognize the guerrillas as a political power, but rather as an aggressor trying to seize power by force.

Other questions remain. Do Salvadorans want a dialog with the guerrillas? What guarantees can the representative for the FMLN-FDR give for safeguarding the lives of innocent civilians who oppose the revolutionary marxist movement? Can the government give adequate protection to the guerrillas who decide to join the political process?

While the peace commission reviews the prospect for dialog, it must also consider that there must be the right climate of reconciliation, and, in order to produce this climate, there must be a credible amnesty program. The question of dialog in El Salvador is as heated a subject as the question of human rights is in Washington. Had Congress imposed a negotiated settlement prior to the March 1982 elections, it would have deprived the majority of Salvadorans of political suffrage. The same is true today.

Dialog should be geared toward the resolution of differences between those factions willing to participate in the search for a political solution and in the elections of 1984.

I have been told that my time is up. If I could read just my concluding paragraph.

The CHAIRMAN. The rest of it will be incorporated in the record, and we thank you very much.

[Mr. Araujo's prepared statement follows:]

PREPARED STATEMENT OF RICHARD ARAUJO

Mr. Chairman, members of the Committee, I very much appreciate this opportunity to discuss with you Presidential certification authorizing continued assistance to El Salvador.

Though I will briefly address the five items specified in the certification process, the focus of my attention will be on the overall complexity of the situation. To the best of my ability, I will try to describe how Salvadorans view these issues and suggest some possible solutions to the problems.

The issue of certification certainly necessitates a review of the evaluation process in El Salvador. From my perspective, however, undue emphasis has been placed on the quantitative aspects of human rights violations, while insufficient attention has been paid to the overall effects of the violence on the people as a whole.

Having previously testified before the Committee on this issue, I know you are well acquainted with my life-long interest in El Salvador. Like other witnesses that will come before this Committee, I have recently visited El Salvador with the hope of obtaining a better understanding of the situation there and the effects of U.S. involvement in that country. To my advantage, I was able to conduct a series of in-depth interviews with representatives of all aspects of Salvadoran society without the usual publicity and fanfare that usually, albeit unfortunately, accompanies public interest groups and even congressional delegations.

I found the situation in El Salvador to have grown even more complex than a year ago. Certainly there has been progress in several of the areas required by certification. However, there are many other areas and issues that are equally as important, but because they have not been included in the certification requirements have gone virtually unnoticed. If U.S. assistance is meant to help and improve the Salvadoran way of life, then it is incumbent upon us to help the Salvadorans fashion a life-style that they themselves wish and choose, rather

than one that suits only our standards. We must never forget that America's involvement in El Salvador is premised on that government's request and is meant to safeguard and protect their national security and sovereignty. El Salvador is presently experiencing the growing pains of democracy; it would be unwise and premature to pass judgment now.

HUMAN RIGHTS (GENERAL)

From my perspective, I believe there has been limited progress in the general area of human rights. The picture of gross human rights violations that has been presented by some members of Congress and "outside" observers is, in my judgment, essentially unbalanced. Part of the reason for such distortion may be found in the inherent bias against the Salvadoran Government within the certification process. As the members of this Committee well know, there are several factions involved in the conflict in El Salvador. However, only the Salvadoran Government must comply with the certification requirements, i.e. curtail human rights abuses. Human rights organizations—whose principal function is to record such violations—more often than not focus their attention on government abuses while ignoring or minimizing violations committed by the guerrillas.

Certainly, human rights violations should be a major concern of all observers of the Salvadoran situation. Given the fact that certification for continued U.S. aid requires that El Salvador "is making a concerted and significant effort to comply with internationally recognized human rights," it is imperative that a fair and objective evaluation of this problem be undertaken. Unfortunately, politics and passion often cloud the issue and distort discussion.

Last month, two civil liberties groups released their findings on human rights violations in El Salvador. The bottom line of the joint study was that the situation in El Salvador was "worse than ever." The 115-page report claims that in the last 6 months government security forces or allied paramilitary groups were responsible for 2,339 civilian deaths, while the leftist guerrillas were accountable for only 20 deaths over the same period of time.¹

It has become increasingly difficult to ascertain who killed whom in the struggle. Obviously, in the case where survivors or witnesses are present, the task is relatively easy. That, however, is often not the case in El Salvador. To single out the security forces for the majority of human rights violations and to offer little in the way of substantive documentation damages the credibility of the reports. There is the further difficulty of determining which violations were committed by the guerrillas.

An investigation of El Salvador's recent history shows the number of violent deaths during "peace time" to be very high. Government figures of violent deaths recorded on an annual basis before 1975 indicate that some 3,000 civilians died annually in the country for non-political reasons. One must wonder how many of the reported 5,339 deaths in 1982—as reported in the study by the two civil liberties groups—are attributable to emotional violence? Also, where are the figures for deaths from starvation and malnutrition caused by such violence? How many peasants died in captivity as a result of being evicted from their land by the guerrillas? How many thousands of children have been left orphaned and psychologically impaired? How many die in displacement camps because the government and relief workers do not have enough food and medicine, as well as volunteers, to help them? Why are these factors not counted among human rights violations?

Unfortunately, one measure of human rights violations is the "numbers game." While the numbers have decreased, the fact of the matter is that violations nevertheless continue. To properly evaluate human rights violations in El Salvador one must necessarily study *all* aspects of human rights violations!

Some human rights violation reports that single out paramilitary and government forces give vivid descriptions of torture, mutilation as well as tales of midnight kidnappings and disappearances. Only recently have reports circulated in the U.S. media implicated the guerrillas; these reports were so obvious they could no longer be ignored. A local, Spanish/English, Salvadoran publication described what has become known as the guerrilla's major mistake of last year—the mass kidnapping in San Sebastian:

¹ The American Civil Liberties Union and America's Watch Report on Human Rights Violations in El Salvador (January 1983).

In a scene reminiscent of Nazi stormtroop tactics, 100 heavily armed guerrillas surrounded the duty soccer field of the village of San Sebastian . . . and rounded up the men, women, children and both teams and marched them into the hills. The National Guard was alerted but the contingent was too small to hold back the attackers, who descended from trucks and by foot from the surrounding hills.⁴

Within a week, most of the captured peasants either escaped or were released refusing to join with the guerrillas. Three people were, however, killed trying to escape the incident at San Sebastian. In other villages, peasants not as lucky as those in San Sebastian have been forced to roam the hills with the guerrilla forces. The peasants are used as "human shields" for the guerrillas when they confront government forces. The real tragedy is that innocent civilians are needlessly added to the increasing number of casualties.⁵

The Human Rights Commission, established by the government on December 2, 1982, under the pact of Apaneca, is composed of civilians, union leaders, and a Church representative, who also acts as its director. It has been reviewing human rights cases since its inception.

In its second report, the Commission made the following observations:⁶

In December, 10 out of 68 cases were resolved.

A number of members of the Farabundo Marti National Liberation Front (FMLN) turned themselves into the government.

Former guerrillas claim that foreign mercenaries are treated better than Salvadorans.

Guerrilla forces suffer internal disagreements.

Bishop Aparicio of San Vicente condemned the guerrilla attacks on San Sebastian and Santa Clara.

Bishop Aparicio claims that one of his former parish priests is actively participating with the guerrillas in San Vicente.

The Commission expressed concern about the difficulty of defending the right to life and personal safety, as well as creating a national consciousness at all social levels.

During personal interviews with the Commission's director, Monsignor Freddy Delgado, he expressed support for the work of the Commission as well as the government's commitment to helping the Commission attain its goals. His only regret at the time was that the Commission could not immediately consider the cases pending prior to December 2. One of the Commission's tasks in 1983 is the "investigation into the assassination of Archbishop Romero, as well as the pending international cases of those killed in El Salvador, Americans, Europeans and Japanese."

Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, has expressed concern that congressional consideration of the human rights situation may be shortsighted. He points out that Congress does not consider human rights violations perpetrated by the guerrillas. He also states that Congress "does not ask whether a cutoff of American military aid would curb human rights violations or whether it would hurt our influence with the military. . . ." What is clear is that the issue is very complex.

The argument for cutting off aid to El Salvador is based essentially on the human rights violations supposedly perpetrated by government-related forces. It is, however, never proven that U.S. assistance in some form promotes those violations, nor is it proven that the government which is benefitting from that aid and with whom the United States has an agreement is ordering those violations to occur. Consideration is also not given to the proposition that human rights violations would increase if the aid were cut off. It is naive and irresponsible to think that the government will have a better chance of settling the issues once the United States has pulled out of El Salvador especially when there is no leverage in extricating Cuban and Soviet personnel out of the conflict as well.

ELECTIONS AND POLITICAL SOLUTIONS

Substantial progress has been made in the development of the political, democratic system. Democracy is in the developmental stage in El Salvador today ;

⁴ "Mass Kidnapping in San Sebastian, Guerrillas abduct 200," *El Salvador News Gazette* (Dec. 13-19, 1982), front page.

⁵ "Civilians Suffer in Army Drive in El Salvador," by Christopher Dickey, the *Washington Post* (Jan. 22, 1983), A12.

⁶ Human Rights Commission Report (Jan. 8, 1983) in San Salvador, El Salvador.

⁷ Elliott Abrams, "El Salvador: Are We Asking The Right Questions?", the *New York Times* (July 29, 1982).

efforts to push the Salvadoran Government to make quick radical changes could easily backfire and turn the political opposition forces to an even greater degree of polarization. Such a move could be a prelude to a tragic and bloody civil war.

Following the March 28, 1982 elections, a power struggle ensued over control of the Constituent Assembly. The results were the formation of a coalition of conservative parties holding a majority of assembly seats and the election of Roberto D'Aubuisson, leader of the rightist Republican Alliance party (ARENA), as president of the Constituent Assembly. The selection and formation of a government of Unity followed with the participation of the three parties that had received the largest number of votes in the elections. Today, the government of Unity is headed by President Alvaro Magaña and three vice presidents representing the three political parties: ARENA, the Christian Democrats, and the Party of National Conciliation (PCN).

On August 3, 1982, leaders of the three parties signed a document called the "Pact of Apaneca," which outlined a unified stand within the ruling coalition. The pact includes a call for consolidation and perfecting of the agrarian reforms, a concerted effort for the reduction of human rights abuses, and a commitment to defeat the leftist rebels, as well as a guideline for presidential elections. The pact dictated a "program of immediate action" calling for the establishment of three commissions: peace commission, human rights commission, and a political commission. (See Appendix I.)

Priority was given the formation of the political commission, and a deadline was set (September 30th) for the following agenda items:

- (a) Appointment of a new Central Electoral Council;
- (b) Drafting of rules and regulations for the electoral process;
- (c) Municipal elections;
- (d) Presidential elections;
- (e) The transfer of executive power by the present interim regime.

The political commission met the deadline and announced the formation of the Central Electoral Council and the scheduling of presidential elections for March 1984. With the political commission in place, the other commissions (Peace and Human Rights) were launched.

These commissions are functioning under a government of national Unity amid economic and political turmoil caused by violence.

The government survived its first political test in the annual reshuffling of cabinet positions. President Magaña faced protests on the changes of new ministers from all quarters, including that from Assembly President Robert D'Aubuisson. Specifically, he objected to Magaña's appointment of a member of the Democratic Action Party to the post of Health Minister. This action on the part of Mr. D'Aubuisson cost him the support of his rightist-center coalition; the PCN, the Democratic Action Party and the Christian Democrats formed a new coalition. To accuse the government of being a "rightist" government dominated by D'Aubuisson ignores the historical fact and impugns the actions of the other political parties. Certainly, these actions must be considered as "progressive" in furthering the cause of democracy in El Salvador.

INVESTIGATION OF AMERICANS MURDERED

Investigation into the murders of Americans in El Salvador is continuing, but has been thwarted because of deficiencies in the Salvadoran judicial system. Complaints have been expressed to the Salvadoran Government by both the U.S. Embassy and members of the victim's families who have been provided with at least the knowledge of those charged with the murders, which is not true of Salvadorans who have sought such information. The judicial system must be reformed not only to bring justice for those killed in El Salvador of foreign nationality, but to establish a working and credible system that will bring justice for Salvadorans.

THE QUESTION OF DIALOGUE

The Peace Commission is studying ways for a peaceful solution to the conflict. It is reviewing the present amnesty plan, which was instituted by the government prior to the 1982 election campaign. It is also considering the question of "dialogue" with the opposition forces willing to participate in the March 1984 elections.

Peaceful, honest elections have been scheduled for no later than March of 1984. The Central Elections Commission is coordinating the plans for the elections. The Peace Commission intends to promote participation of all parties

willing to forsake violence. A dialogue with the guerrillas is one of the ways likely to achieve a peaceful, political settlement if they are willing to respect and participate in the democratic system in place.

A January 9 interview in the Nicaraguan newspaper *La Prensa* quoted Cuba's Premier Fidel Castro as saying, "Guerrillas cannot win in El Salvador." He charged that the situation in El Salvador "can only have a political solution, and it is the United States which is systematically opposed to this outcome." He added, "I can confirm that the revolutionary forces in El Salvador are ready to negotiate," warning that "only they (Salvadoran revolutionaries) can decide the path which is most convenient."⁶

Congressman Stephen J. Solarz's remarks on January 16 in El Salvador seemed to echo Premier Castro's remarks when he said, "The only way to bring the war to an end is through negotiations." Congressman Solarz added that the certification legislation should be rewritten to halt military aid unless the government stops the murder of civilians by death squads.⁷ Congressman Solarz does not demand that the guerrilla forces stop slaughtering innocent civilians. Nor does he consider that the government does not recognize the guerrillas as a political power but rather as the aggressor trying to take power by force.

Other questions remain. Do Salvadorans want a "dialogue" with the guerrillas? What guarantees can the representative for the FMLN-FDR give for safeguarding the lives of innocent civilians who oppose the revolutionary Marxist movement? Can the government give adequate protection to the guerrillas who decide to join the political process?

While the Peace Commission reviews the prospects for dialogue, it must also consider that there must be the right climate of reconciliation, and, in order to produce this climate, there must be a credible amnesty program. The question of dialogue in El Salvador is as heated a subject as the question of human rights is in Washington.

Had Congress imposed a negotiated settlement prior to the March 1982 elections, it would have deprived the majority of Salvadorans of political suffrage. The same is true today.

The certification act specifically states that the Government of Salvador "is committed to the holding of free elections at an early date and to that end has demonstrated its good faith effort to begin discussion with all major political factions in El Salvador which have declared their willingness to find and implement an equitable political solution to the conflict. . . ." Dialogue should be geared to the resolution of participation of those "willing" to find a political solution through the elections of 1984.

Premier Castro speaks with authority on what is best for the "Salvadoran revolutionaries," but he does not speak for the Salvadoran people and of what they think is best for them through democracy.

If the United States is committed to democracy, then it must be committed to the needs of the majority of Salvadorans, a point seldom considered by the numerous legislators whose junkets are more for getting publicity than gathering facts about El Salvador.

The democratic process is in place in El Salvador. We must let Salvadorans choose their destiny through democratic means, that is, through the electoral process. Those members of the left who believe in democracy must find a solution to their differences in the Salvadoran political arena through the ballot box.

BENEFITS OF MILITARY ASSISTANCE

The political situation in El Salvador has improved to the point where there is real hope for a peaceful solution and the holding of elections next year. The government armed forces have made substantial progress in improving their relationship with the civilian population. The military now helps civilians with medical care, road building, school construction, and other services. The military also helps provide food and shelter to those in need. This progress has been largely dependent on U.S. military aid.

U.S. military aid has gone to far more than what critics call "boots and bullets." During fiscal year 1982, U.S. security assistance to El Salvador included \$25 million in Foreign Military Sales (FMS) and grant aid, \$1 million in International Military Educational Training, and \$55 million, 506(A) drawdown authority. This money has helped train Salvadorans in military tactics. It has also been used to fund educational programs for the troops.

⁶ "Castro Admits: Guerrillas Cannot Win in El Salvador," *La Prensa* (Jan. 9, 1983).

⁷ "Solarz Wants Salvador's Arms Aid Tied to Talks," *The New York Times* (Jan. 17, 1983), p. 7.

⁸ International Security and Development Act of 1981, section 728(d) (Public Law 97-113).

The average age of the Salvadoran army troops is between 16 and 18 years. Most troops have little more than a third grade education, while others cannot read or write. Training this young military force has brought a better understanding to the military leadership of what it means to be a safeguard of national security. According to some of the U.S. advisers' comments on the Salvadoran Army's performance, "The Salvadorans have proven to be a capable force, with quick learning capabilities." Continued training will prevent the necessity of using American forces in El Salvador, which will in turn enhance our own national security.

They have been taught to be courteous and not to force military strength upon civilians during interrogations. This more humane treatment by the soldiers has improved the Army's image among the general population.

The recent dispute and insubordination of Colonel Ochoa, his refusal to accept orders to an overseas post, and his demands for the resignation of Defense Minister Garcia were resolved in a manner not in common with the past military history of El Salvador. This divergence from the old way was especially evident when the president had the chance to play a major role in the solution. The dispute was basically over different technical interpretations of the war against the insurgents put forth by the high command and the officers in the field. It was not a power struggle. The positive settlement of the dispute demonstrated the level of maturity of the Armed Forces, as well as their willingness to allow intervention by a civilian in power, an action which strengthened the power of the President as Commander-in-Chief. This also is another measure of progress.

THE GUERRILLAS

When considering advancements in the area of the Armed Forces, one cannot ignore the capabilities of the guerrilla forces and the extent to which they are prepared to maintain their prolonged struggle to achieve power through a military victory.

The guerrillas also must be receiving millions of dollars to finance their fighting, since they also must train, clothe, and feed their soldiers. The peasants give assistance to the guerrillas in areas where there are smaller numbers of military operations and where crops are more accessible. But the majority of food, weapons, and medicine still comes from neighboring Nicaragua.

In a recent visit to El Salvador, Representative Philip Crane spotted a Soviet-made helicopter traveling from Nicaragua to El Salvador. He was visiting a naval base in the Gulf of Fonseca, which borders Nicaragua, Honduras, and El Salvador. The area of the sighting was a popular route for small aircraft to make drops in the northeastern sections of El Salvador. It is further noted that the helicopter was not registered in El Salvador.*

El Salvador does not have a radar system, which would make violations of air space over the country more difficult. U.S. observers believe that the flow of arms into El Salvador has been limited to air traffic, as sea and land routes are better-controlled by the Salvadoran and Honduran Governments.

The area controlled by the guerrillas is limited to the eastern section of the country, and their strongholds have not been kept for more than a few weeks, as the guerrillas are continuously on the run. (See Appendix II Map). The guerrillas have not been able to claim many military victories. They have been successful at staging terrorist attacks on transportation and communication facilities and valuable farm land, which are now used by the peasants under the land reform program.

Recent U.S. media reports of guerrilla attacks in a number of Salvadoran provinces give the false impression of many guerrilla victories and an exaggerated picture of their capability to advance against the armed forces. In reviewing such reports, one should ask why the guerrillas do not make similar attacks when El Salvador is not being discussed in Congress. A number of reliable sources in El Salvador claim that the guerrilla attacks could only be sustained for 1 week to 1 month maximum. Their attacks have become a show of violence to impress Congress.

Other sources claim that large numbers of guerrilla mercenaries from Nicaragua have entered El Salvador through the areas where El Salvador borders Honduras. These mercenaries are located in the Chalatenango province, in the cities of La Palma, Citla, and San Ignacio. Some eye witnesses state that the mercenaries number at least 1,000, while other reliable sources claim the number

* Ted Thomas, "Crane Says He Saw Rebel Air Supply," the Washington Times.

is much higher. If the guerrillas truly had the support of the majority of the people, they would not need to import additional assistance.

SOCIAL AND ECONOMIC REFORMS

While human rights violations continue, they are decreasing in number. Progress, though slow, is being achieved in this critical sector. There is, moreover, evidence of progress in social and agrarian reforms. The effectiveness of land reform efforts has continued to be the center of heated arguments. The most violent opponents of land reform have been the guerrillas, who objected not to land reform itself, but to its implementation by the then-ruling junta. Redistribution of the land has been one of the guerrillas' most basic promises, a promise that cannot be kept by them if it has already been accomplished. Much of the area affected has been redistributed through the land reform program. In retaliation, the guerrillas have burned over 21,000 tons of sugar cane and over half of the cotton production this season.

When land reform was put into effect by the ruling junta, it was used more as a political tool than as a means of helping the landless peasants or as a solution to the agricultural problems of El Salvador. While Carter was the strongest supporter of the reform programs, his administration failed to persuade Congress to provide the substantial economic assistance necessary to properly implement the reform programs. Such economic aid would have encouraged cooperation from former landowners, since they would have received partial compensation for the land that the government forcefully took away from them.

The land reform program was divided into three phases. The most dramatic was Phase I, in which all property over 500 hectares was to be assumed by the government. A serious problem under Phase I was the above-mentioned lack of money to reimburse former landowners and at the same time be able to finance credit and other necessary services for the new cooperatives established on the confiscated land. Phase II was to follow with property of 100 to 500 hectares being confiscated as well. This phase has been suspended indefinitely in view of the economic problems connected with Phase I.

Nevertheless, Phase III, also known as the land-to-the-tiller program, has been implemented. It allows renters and sharecroppers to purchase up to seven hectares of land. This reform has had some success. The government set a goal of distributing 22,000 provisional titles under the Phase III stage of the agrarian reform during the past certification period. The recent surge in applications for those titles makes this goal possible to achieve.

In another area of progress relating to land reform, the government has earmarked \$20 million for compensation to former landowners whose land and agricultural equipment were confiscated under the Phase I stage of the reform. This amount will cover only a small percentage of the government's debt to former landowners, but it will ease some of the tension between former landowners and those benefiting from the land reform program.

The pressures of the certification process have limited the development of the private sector. Economic reforms implemented by the government, such as nationalization of the banks and the marketing of cotton, coffee, and sugar, have limited the development of the private sector. For example, cooperatives and their beneficiaries were to have easy access to loans from the government-controlled banks, but this is not the case.

RECOMMENDATIONS

Considering the positive effects of U.S. involvement in El Salvador—promoting the development of democracy in the region U.S. national security as well—to decertify at this time would be to abandon the changes that have been so wrenchingly obtained. Instead the United States should support the progress in El Salvador by continued assistance. The following actions would demonstrate that support.

1. Economic assistance.—Support must be given to help revive the private sector. This could be achieved with short-term investment loans from private institutions in efforts to revitalize industry and provide employment to the thousands in urban areas.

2. Support for the Caribbean Basin Initiative.—The trade and tax incentive portion of this program would create a market for goods manufactured in El Salvador, making it less economically dependent.

3. Judicial system and human rights.—The development of an efficient judicial system should be encouraged to expedite confidence in the government and bring speedy and just solutions to the many cases of human rights violations. The Salvadoran Government, as well as the people, must learn the importance of a functional judicial system.

4. Democratic institutions.—Support for the democratic Plan of Apaneca as well as the 1984 elections is essential. In developing a democratic society, the people must learn the meaning of democracy. The U.S. Congress has been too quick to judge limited performance in democracy. It was, after all, the Salvadorans who displayed their interest in democracy in the March 1982 elections.

5. Agrarian and economic reforms.—Decree 207, which allows issuance of provisional titles under the Phase III, should be extended one more year to allow all its beneficiaries to file claims. Former landowners who lost land under the Phase I program should be compensated with funds earmarked for that. Phase II of the reform should not be considered, since El Salvador's major crops do not command a high price in the world market.

6. Military assistance.—The United States should continue to assist the training of the Salvadoran military forces and to provide technical and advisory support. Eventually the Salvadoran Army will become more skilled and less dependent on the United States.

7. Certification.—The certification process should be rewritten in order to evaluate all areas of this complex situation. The timing should be changed to a period of one year to allow a better measure of progress in El Salvador and to enable the democratic system to develop.

If the United States is committed to democracy, then it must be committed to the needs of the majority of Salvadorans. The democratic process is in place in El Salvador. Salvadorans must be allowed to choose their destiny through democratic means—through the electoral process. Members of the left who believe in democracy must seek an answer to their opposing views through the ballot box in the Salvadoran political arena.

APPENDIX I

BASIC PLATFORM OF GOVERNMENT

We, the President of the Republic and the representatives of the Political Parties in the Constituent Assembly, assembled under the initiative of the President,

Overwhelmed by the popular will expressed on March 28 to constitute a Government to guide the country toward the goals of peace, social and economic progress, and the fulfillment of all democratic values,

Concerned by the evidence of divisions in Salvadoran society,

Motivated by the imperative need to achieve a national reunification,

Convinced of the need to rationalize the functions of government,

Have agreed

To adopt a Basic Platform of Government founded in those principles, achievements and aspirations—expressed as objectives of a Government of National Unity—on the following basis, shared jointly by all political parties that we represented during the electoral campaign:

Peace.—To achieve peace and tranquility, in a social context that will allow all Salvadorans to live, to work and to progress as human beings, as a result of national social reunification, without regard to narrow self-interest, and through the expression of political interests in an orderly institutional manner.

Democratization.—To obtain effective participation of all social sectors in the operation of government by the people through their legitimate representatives—thus assuring confidence in and the effectiveness of the process of political participation and expression.

Human rights.—To achieve the fullest exercise of all inalienable human rights, the Government is to be the effective guarantor, not only of the physical security of individuals, but also of the individual's pursuit of accomplishments.

Economic recovery.—To establish the proper climate to create confidence for the development of a socially responsible market economy, creating the stimulus for different factors of productivity that will encourage economic development sufficient to fulfill adequate social and political objectives, emphasizing employment and social well being.

The economic recovery shall begin through a dynamic reactivation of all manufacturing industry, construction, tourism, handicrafts and general services.

The agricultural sector shall be provided with the necessary financial resources and technical assistance and the legal protection of private property rights shall be guaranteed. The unique problems characterizing the development of small enterprises shall be given special attention.

With the private sector, working in a spirit of cooperation and unity, efforts will be mounted to obtain financial assistance, from both bilateral and multi-lateral sources, to create and strengthen a climate for private investment.

Social and economic reforms.—To consolidate and guarantee the reform process in such a way as to obtain a greater level of economic and political participation of all social sectors, attempting to increase productivity for the general well being, as one basis to decrease social tensions to achieve a harmonious coexistence.

We shall seek to improve and to increase effectiveness in the areas of agrarian, banking and foreign trade reforms.

In the agrarian reform process, this affirmation includes financial and technical assistance, protection of the legal status of cooperatives, unions, organizations of the campesinos, as relates to property and possession of land, and the preservation of the rights of former landowners to just compensation.

Confidence and security.—To achieve a climate of confidence in the judicial system in order to create the needed social confidence to render possible the realization of the other major goals of the Government.

The Government of National Unity shall try to restore the values of our society, with the special purpose of eradicating corruption in all government activities; will adopt measures of austerity in public expenditures; and will seek to maintain the independence of the powers of the State with respect to the public and its institutions. Special emphasis will be placed on the administration of justice through strengthening the judicial system.

Strengthening of international support.—To improve our capacity in the international sphere, so as to obtain higher levels of international cooperation, political support and respect for our international rights, emphasizing our independence, our equality among nations, and our national sovereignty, to guarantee to all Salvadorans the right to self-determination and to oppose the interference of other States in our internal problems.

Consequently, we have agreed

To respect and to obtain respect of those principles, achievements and aspirations, while maintaining our identities as separate political parties, to achieve the aforementioned general objectives, to do so in full exercise of all our rights, and in compliance with our responsibilities, to adopt the following:

A PROGRAM FOR IMMEDIATE ACTION

For the establishment of the following commissions:

Peace commission.—There will be created by an executive decree a Peace Commission which shall be composed of institutions, groups and persons devoted to study the problem and which shall propose the necessary solutions to obtain an everlasting and strong harmony and social stability.

Human rights commission.—To protect and promote human rights, in the fullest sense, a Human Rights Commission will be created by executive decree. This Commission will submit recommendations and undertake appropriate measures for the effective guarantee and achievement of all human rights, recognized by our Constitution and in international agreements.

Political commission.—Coordinated by the President of the Republic, with the participation of the Vice-Presidents and the Ministers of Foreign Affairs, Defense, and representatives of the political parties, a Political Commission shall be created by executive decree, to coordinate compliance and execution of this Basic Platform of Government, based on the need and the will of the present Government to strengthen the democratic process. Among other things, the Commission must reach agreement before September 30, 1982, on a schedule specifying the dates for the following political events:

- (a) Appointment of new Central Electoral Council.
- (b) Drafting of rules and regulations for the electoral process.
- (c) Municipal elections.
- (d) Presidential elections.
- (e) The transfer of executive power by the present interim regime.

All the undersigned parties, in our representative capacities, agree to urge the members of the Constituent Assembly to enact a Political Constitution as soon as possible.

Signed in the city of Apaneca, Department of Ahuachapan, Republic of El Salvador, the twelfth hour of the third day of August, nineteen eighty-two.

Signed by:

ALVARO MAGAÑA,
President of the Republic.

*Partido Demócrata Cristiano.
Alianza Republicana.
Partido de Conciliación Nacional,
Partido Popular Salvadoreño.*

APPENDIX II



The CHAIRMAN. Prof. Enrique Baloyra, the University of North Carolina, Chapel Hill.

**STATEMENT OF PROF. ENRIQUE A. BALOYRA, UNIVERSITY OF
NORTH CAROLINA, CHAPEL HILL, N.C.**

Mr. BALOYRA. Mr. Chairman, I am grateful for the opportunity to appear before you today. My field of expertise is Latin American politics, and I have spent a considerable amount of my career studying the problematic of democratic and dictatorship in this hemisphere. I participated, together with two colleagues from the university, in a study commissioned by the Department of State in 1980 about the problematic of transition, and one of the papers that I prepared in that effort is now a monograph on the Salvadoran conflict. I was there in March 1982, as an unofficial witness to the election.

I am here before you today to tell you three things: Where the Salvadoran process stands, whether the administration is pursuing an adequate mix of policies, and what the United States and particularly the Congress could do to make a contribution.

What we have in El Salvador right now with regard to what is defined as the government is not a government. It is a three-ring circus. Those persons around President Magaña who we could identify as democratic aperturists effectively lack the means and the opportunity to enforce the provisions of certification.

I believe that President Magaña is an honorable citizen of his country, but the Pact of Apaneca cannot really last much longer, nor can it by itself create and manufacture the facts of the transition.

The Apaneca Pact puts together two historical enemies in Salvador. On one hand what I have chosen to define elsewhere as the disloyal right, and on the other the Christian Democrats and the element whom we could identify as in favor of a democratic transition.

The report and much of the dialog today interprets the recent cabinet crisis as an episode that has stressed the authority of President Magaña. I believe that is true to an extent, but I anticipate a reaction on the part of the disloyal element of the right.

And what have we given President Magaña? What has the administration done to effectively cope not only with the guerrilla challenge in the field that is real, as we all know, but with this disloyal element who is not interested in democracy, is not interested in reforms, and is not interested in human rights? I find a fuzziness of means here.

And while we agree that we want a peaceful settlement to the crisis, it seems to me that at this juncture we need more than this signal; we need some specific action.

The military remains relatively autonomous. With the aid we have helped them make more independent and to become less accountable to the nation as a whole.

Right now we have the opportunity to give President Magaña considerable leverage in selecting perhaps the high command of the military beginning with his Minister of Defense. There is nowhere in the certification, nowhere in the conditions for certification that the Sal-

vadoran President in effect be able to act in fact as commander in chief.

I would link continuation of the aid precisely to this fact, to the fact that in the middle of this crisis we get a clear signal that Magaña in fact is in control, that he himself and his cabinet can select the personnel, the senior personnel of the armed forces. We cannot hold them accountable if they do not have the means to exert accountability.

Finally, the disloyal right—this is not the oligarchy. There are some families that are identified as the oligarchy who have tried to in the past, including Richard Araujo's own uncle, to improve the lot of Salvadorans. By the disloyal right I mean the fanatical element which has banded around Roberto D'Aubuisson right now, who have been biding their time to derail the democratic process.

We in the administration have been ignoring this fact for a long time, and we have not supported our Ambassador enough when he has tried to confront this group of people. He recently in a speech called them a mafia, and he received the invectives and vituperation of this element, and the White House did not come to his defense very forcefully. So therefore, we need some concrete action.

Since I am here and this is a rare opportunity, allow me to advance three concrete proposals that you should consider with regard to certification. I assume that the only moral purpose for which we can give aid and be present in El Salvador at this point in time is to enable the country to find a democratic solution. Therefore, I would advance these three proposals thinking that they might manufacture a degree of political power that a government of transition is going to need to bring the transition to a peaceful settlement.

The first one is to channel absolutely all the aid to President Magaña and his cabinet, and to give them the authority to spend that aid as they deem necessary with the following restrictions, which is my second proposal.

First of all, that expenditure of military funds be contingent upon President Magaña exercising real authority over the nomination of the senior military personnel. There is not a single military officer in El Salvador who has been appointed by a civilian, and this is one of the historical roots of the problem in El Salvador, inability to control the military.

The final is that I would suggest to the Congress that it engage in discussions with the White House and representatives of the Salvadoran Government to determine which amount of the aid should be earmarked for reforms, and in view of what transpired in the previous panel, humanitarian aid. And that a considerable proportion of that aid be dedicated to strengthening the Salvadoran judiciary.

Congress must reverse itself in this regard and repeal the amendment of section 620(g) of the Foreign Assistance Act of 1961 which imposes restrictions on the use of aid for the purpose of reform. This has important symbolic and effective impact from the standpoint of perception of the right.

I will stop there since the red light is on.

Thank you very much.

[Mr. Baloyra's prepared statement follows:]

PREPARED STATEMENT OF PROF. ENRIQUE A. BALOYRA

I am very grateful for the opportunity to appear before the Committee today. My field of expertise is Latin American politics and much of my professional life has been dedicated to study the problematic of democracy and dictatorship in this hemisphere. My interest in and familiarity with El Salvador date from the summer of 1980, when I began to prepare a long report on contemporary Salvadoran policies. That effort was part of a larger study in which I collaborated with two colleagues from the University of North Carolina. The study was commissioned by the Department of State in an effort to clarify the dynamics of the transition to democracy in Latin America. My report eventually led to a monograph (*El Salvador in Transition*: UNC Press, 1982) in which I tried to put the facts of the Salvadoran case in a broader perspective.

During the last three years I have befriended Salvadorans from practically every walk of life and every ideological persuasion. I travelled to El Salvador in March of 1982 to witness the election as an unofficial observer. I have stayed in close touch with the situation ever since. Much of what I will say before you today is simply an attempt to rethink some previous conclusions in the light of more recent development. I will avoid argumentation about the meaning of certain statistical indicators since other witnesses, more qualified than I in those areas, will address such concerns. My purpose will be to suggest to you where the Salvadoran process of transition stands today, whether the administration is pursuing an appropriate mix of policies, and what the United States Congress could do on the occasion of the review of this third certification.

The Government.—One basic problem with El Salvador is that it lacks a truly unified government. The patriotism of President Alvaro Magaña, the patient efforts of our embassy staff, and the dedication of many perurists occupying official positions have been unable to make the National Unity Government work. The National Unity emerged as a temporary solution that sought to prevent the total breakdown that could have followed the inconclusive results of the elections of March 28, 1982. The aftermath of the election witnessed a concerted effort on the part of the "disloyal Right" and other conservative Salvadorans to gain complete control of the government and to reverse the reforms enacted by the Provisional Revolutionary Government. Only the pressure of the military and the restraining efforts of our diplomats prevented this takeover. The Pact of Apaneca represented an attempt to give some coherence to the new arrangement and to formulate very broad desiderata but there remained very profound substantive and procedural differences among the subscribers of the Pact. Therefore this pluralism is more apparent than real and it is not conducive to an effective resolution of the Salvadoran crisis.

The Apaneca Pact, in and of itself, cannot be expected to produce or lead to the crystallization of a viable government of transition that may rein in the military and produce a peaceful solution to the crisis. This pessimistic appraisal is grounded in precedent. The First Junta organized by the PRG fell apart in December of 1979 in part due to the heterogeneity of the actors included therein. The moderate Left wanted to clarify the issue of human rights and bring the popular organization into the fold. The conservatives in the government wanted no part of the reforms and insisted upon dealing firmly with subversives. No middle ground could be found and the coalition collapsed. The Apaneca covenant seeks to reconcile the main architects of the reforms with the more intransigent element of Salvadoran conservatism, an element that had to be excluded from that First Junta due to its close collaboration with the government of General Romero.

The document of certification ("Report on the Situation in El Salvador with Respect to the Subjects Covered in Section 728(d) of the International Security and Development Cooperation Act of 1981, Public Law 97-113, January 21, 1983;" hereinafter referred to as "Report") makes no direct reference to this problem and otherwise adopts a very triumphant perspective in its brief references to the topic ("Report" pp. 20-21). The official representatives of the "disloyal Right" who are banded around the figure of Roberto D'Aubuisson and his ARENA movement have not under any stretch of imagination engaged in bargaining and compromise. Instead they have sought to dominate the process, impose their views, intimidate others, and undermine the already precarious bases of legitimacy of the government.

The Report interprets the recent Cabinet crisis as an episode that strengthened the authority of President Magaña as "Chief Executive . . . and . . . Commander in Chief" (p. 21). To be sure, a form of collaboration appears to be emerging among deputies from the PDC, the PCN, and the AD. This was instrumental in keeping the options for a dialogue open and in mounting a challenge against ARENA's monopoly of the agenda. However, there is every reason to believe that if they continue to be thwarted in their attempts, Mr. D'Aubuisson and his associates, and the disloyal Right in general, will intensify their use of violence and their attempts to politicize the military.

Does the administration have a policy for this contingency? Is the administration prepared to confront this challenge head on and to put the prestige and influence of the United States squarely behind the democratic aperturists? Previous actions by the administration offer little room for comfort in this regard.

Although frustrated in its attempts to become hegemonic the disloyal Right continues to believe that if it manages to polarize the situation even further and if it destroys its centrist adversaries, the administration will be forced to support it in order to prevent a leftist takeover. The aggressive rhetoric of former Secretary Haig, the slowness of the administration in demanding concrete results in the cases of Americans murdered in El Salvador, the lackluster reception given to former President Duarte, the attempts to reconcile the Duarte policies to the demands of the private sector, and an overall emphasis on a military victory may have helped reinforce that conviction. More recently, when Ambassador Hinton chastised the private sector for not producing an outright condemnation of human rights violations, the administration gave the Ambassador little support while he was the target of much invective and vituperation.

A clear and unmistakable signal is required at this difficult and decisive juncture. Continuation of the assistance to the Salvadoran Government must be contingent upon the rectification of not only the Salvadorans' but also the administration's mistakes. The administration has to evolve a strategy to cope with the subversive threat posed by the disloyal Right.

The Military.—During the tenure of the Christian Democratic juntas (January 1980–April 1982) the difficult relationship between the PDC and the military was predicated on the following. Under the covenant of December 1979, the PDC would implement the program of reforms and run the government, while the military would go about pacifying the country. This did not, in any way, imply military subordination to civilian control. As a matter of fact the Armed Force remained autonomous and accountable only to its own dictates while engaged in what Defense Minister José Guillermo García described as a "black conflict." It is a matter of public record that the PDC was unable to restrain the security forces and drastically cut the number of innocent victims exacted by the conflict.

The Report utilizes the decline in the number of civilians killed in recent months (see appendices B and C) as evidence of President Magaña's increased control over the military. However this decline is probably due to the changing nature of the conflict. In addition Mr. Magaña, after all, owes his present position to the military and he lacks the disciplined and coordinated support of a national party organization, as was the case of his predecessor, José Napoleón Duarte. The recent crisis involving Colonel Sigfrido Ochoa and General García suggests the kinds of divisions within the military. More importantly if, as expected, General García has to step down it remains to be seen whether President Magaña can have a decisive influence in choosing a successor.

There are other indications that the military remain very much beyond the influence of civilian authority. Anyone who has visited El Salvador recently must have noted how Armed Force propaganda completely overshadows government propaganda in the media. This is to be expected, given the orientations of Salvadoran media but the fact remains that, in those messages, the Armed Force presents itself as the ultimate guardian of popular aspirations and national sovereignty. In most places, regardless of their location and of the level of hostilities, military commanders remain the effective authority. Government officials complain in private that they are unable to undertake many initiatives since the military exercise a veto power over a broad range of areas.

Military autonomy and influence has also increased as a result of the hostilities. To be sure, this is to be expected at least to a certain extent. On the one hand, as the Salvadoran economy has changed from an economy affected by war to a war economy, military discretion over the use of public funds has increased. On the other hand, the amounts and kinds of United States military assistance has reinforced this trend. Regardless of whether or not United States aid is

justifiable neither this nor the previous administration have put control of the total aid package directly in the hands of civilian leaders thus depriving them of one of the key mechanisms through which they could begin to control the military. In addition, military aid has not been made contingent on the Salvadoran president's right, as commander-in-chief of the armed force, as the Report proclaims, to appoint all senior personnel of the Armed Force. Not a single one of the senior military commanders owes his post to the president. Small wonder that they can remain outside his effective control.

A proposal for linking a continuation of the aid to this basic requirement of democratic practice is neither chimeric nor naive. One of the taproot causes of the present Salvadoran crisis is precisely the fact that the Salvadoran military have remained above the society.

The inadequacies of the Salvadoran judiciary are described in sufficient detail in the Report (pp. 7-8). In addition Ambassador Hinton has insinuated that the United States could make a contribution in this regard by training more personnel and by providing protection for judges and magistrates (Report, Appendix D, p. 4). However, there has been no discernible movement in this direction. I fully concur with Ambassador Hinton's assessment that "a more effective justice system is essential to ending the war" (Ibid). However we are yet to see any administration or congressional initiative earmarking a portion of the assistance funds for this purpose. If military personnel were trained at taxpayers' expense why cannot we do the same to support the process of transition on this important front? Is there anyone in this room who would not like to see the murderers of American citizens brought to justice? Is there anyone in this room who would oppose a greater and more effective assurance that innocent Salvadorans will be safer?

Increased amounts of military assistance are not going to make the democratic aperturists included in the feeble and unstable coalition of National Unity more capable of delivering security to their fellow Salvadorans. Increased amounts of military aid are likely to contribute to increase the already enormous weight of the military in the political process which is certainly not going to increase the legitimacy of the government. Congress can and should make a very decisive and important contribution in this regard.

The Disloyal Right.—I have referred to the "disloyal Right." above and given the historical and actual importance of this actor in the Salvadoran process I feel obliged to comment albeit briefly on the composition and basic orientations of these conservative Salvadorans. Ambassador Hinton referred to this group in a recent speech, identifying it as a "mafia" (Report, Appendix D, p. 3). Included in the disloyal Right are present and former elements of the security and paramilitary officers, deposed oligarchs seeking to restore their privileges, some entrepreneurs who could not operate within a democratic regime, some of the elements who have monopolized the control of the private sector associations of El Salvador, and some of the individuals who control the media.

At the present time, they have banded around the figure of Roberto D'Aubuisson who offered to them the most ideoneous instrument for the restoration of the traditional system of economic privilege and political authoritarianism that characterized Salvadoran politics since 1932. They remained closely associated to the military during the period of 1932-48 and although their influence declined somewhat during 1948 through 1975 as a result of a somewhat more reformist orientation on the part of the military, in 1976 they overwhelmed an attempt by President Molina to implement a modest program of agrarian reform called the "Agrarian Transformation." They regrouped during the presidency of Romero, whom they helped put in power, unleashing what appeared at that time to be an unprecedented level of repression.

Following the coup of 15 October 1979 most of these elements found themselves out of power and they engaged in a concerted effort to destroy the PRG, increase the polarization of the conflict, and derail the process of transition. It must be stressed that this historically-conscious group is aware that, in this century, in El Salvador, there have been numerous occasions in which conservative Salvadorans were able to thwart processes of political transition that could have culminated in a democratic outcome. They are firmly convinced that they will be able to repeat the precedent. Elsewhere I have described and discussed the political regime that these actors are trying to restore in El Salvador as "reactionary despotism." I will not strain your patience belaboring the description except to point out that that political regime cannot be defended as a variant of democratic capitalism. As a matter of fact, the immediate cause of the present

Salvadoran crisis must be sought in the short-lived attempt to restore reactionary despotism during 1977-79. Given the present condition of the Salvadoran nation that system could only be restored, albeit briefly, by implementing a "final solution" which, in the view of those who subscribe to this alternative, would destroy all the democratic forces.

Attempts to include these actors in a "pluralist coalition" are doomed for they are not interested in democratic procedures nor in pluralist outcomes. They have done and are doing their best to prevent a democratic outcome to the Salvadoran process of transition. They are trying to undermine the reforms which although badly battered are but the only thread of legitimacy and credibility from which the genuine aperturists are hanging at the present time. If they have their way the guaranteed outcome is a prolongation of the civil war and the eventual emergence of the most recalcitrant leftist element. They must and can be defeated in their purpose but this will not be possible if we simply let nature take its course.

Conclusions and Recommendations.—The United States can play a constructive role in nations undergoing processes of political transition which offer at least some possibilities of a democratic outcome. I believe that such is the case in El Salvador. But we must be clear about our moral purposes and about the mechanisms that can bring about the consolidation of democratic regimes. Discussion and approval of the "Certification to Authorize Continued Assistance for El Salvador," submitted to the Chairman of the Committee pursuant to Sections 728 (b) and (d) of the International Security and Development Cooperation Act of 1981 (Public Law 97-113) offers a very good opportunity to clarify the basic purposes of United States foreign policy toward El Salvador, and to rectify some glaring misconceptions that are complicating the prospects for a peaceful and democratic resolution in that country.

The basic purpose of the assistance should be to strengthen a government of transition that is willing and able to bring about such an outcome. A first proposal seeking to serve that purpose is that all the assistance to El Salvador must be channelled through the President of El Salvador who, together with his Cabinet, will determine how the resources of the total package will be spent, with the restrictions described below. A second proposal is that the expenditure of any of the funds for military purposes is contingent upon the demonstrated ability of the Salvadoran President to appoint the Defense Minister, as well as the senior officers of all the security forces. A third proposal is that the administration and the Congress will engage in discussions with representatives of the Salvadoran Cabinet to determine how much of the assistance can be earmarked to strengthen the Salvadoran judiciary and to support the reform program. The latter will require the repeal of the restrictive language included in the amendment to Section 620(g) of the Foreign Assistance Act of 1961.

These proposals are advanced to contribute to clarify how the United States could effectively shift the balance of power in El Salvador in favor of those democratic aperturists who although willing have been unable to solidify the modest gains afforded by the process thus far. This shift will not come easy but it will enable those actors to regain the initiative and to gain credibility for the seriousness of their purpose and the firmness of their commitment. The Report submitted by the administration suggests that we are near that juncture but, unfortunately, not only are we far from it but, in addition, a very serious confrontation is looming.

The proposals would be incomplete, and the discussion of the merits of the Report would be insufficient, if there was no mention of how these could be linked to a dialogue among all Salvadorans who are willing to renounce violence and intransigence and who will become convinced that the elements are finally at hand for an incumbent government to guarantee their physical safety and the integrity of the process. Although it is patently obvious that a pluralist government could not be formed with all the actors who would incorporate themselves to this dialogue, it should be the intent of the Congress that the ultimate purpose of our assistance is to consolidate a regime in which they can freely and peacefully compete to become the government.

The CHAIRMAN. Thank you very much, Professor. We appreciate your study and I know the time and concentration you have had in the last few years, and particularly in this one area.

Mr. Torres, we are happy to have you with us today representing the League of United Latin American Citizens, an increasing number in Illinois, I might say.

Mr. TORRES. In Chicago, as a matter of fact, including quite a few Salvadorans.

STATEMENT OF ARNOLDO S. TORRES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), WASHINGTON, D.C.

Mr. TORRES. It does give me pleasure to come before your committee. I very much appreciate your allowing us to testify and we really appreciate the work that your staff did to get us in to testify. It is the first time that a Hispanic organization has in fact testified on an issue outside of nomination hearings of U.S. Ambassadors to Mexico or nominations of U.S. representatives to the Inter-American Development Bank. So this occasion is, for us, precedent-setting.

We are very troubled with the discussions we have heard today. The discussions have been somewhat macabre and we are actually discussing the degrees of bodies that would legitimize providing U.S. aid to El Salvador.

I think the archdiocese in El Salvador perhaps put it best when they indicated that "if the words and language of men still have some meaning, the word 'improvement' cannot be used to express these situations. Only if the number of deaths were infinitely less and the assassination did not have a structural cause could improvement in human rights be discussed."

We very much agree with the position laid out in that statement by the archdiocese. We believe that the political situation in El Salvador does not, under any circumstances, lend itself to an effective, stable transition of government.

We believe that the recent change of power of the assembly is a very good example to examine and gauge if political improvements have seriously been made. The leadership of Mr. D'Aubuisson of the general assembly has in fact been curtailed significantly and the response by the rightist forces has been a bombardment of submachine guns and pickup trucks with two men shooting into a house where the members in the assembly who developed the strategy to remove the power from Mr. D'Aubuisson, were meeting.

I hardly think that is an example of progress nor of stable institutional change, bringing about a satisfactory political transition.

We do not believe that there is much of a chance for free election in 1984, in March of next year. We do not believe under any circumstances that the structural improvements that have to be made in the judicial system have been made, nor is anything reasonably underway.

The certification process, in our opinion, was a very positive process when initiated, but unfortunately, during our visits to El Salvador, we found that in most cases the government simply spent 2 months preparing themselves to simply meet the criteria that would meet the satisfaction standards of the U.S. Government in order to grant aid.

At the same time, we would be derelict in not indicating that it is inconceivable that this Government would cut off aid to El Salvador in view of the fact that it would negate our concern for the situation in Nicaragua. For us to cut off aid to El Salvador would mean that

this administration would no longer consider Nicaragua as a political and/or military threat.

So we would not anticipate that action taking place by this administration. But we believe that if the U.S. Government could encourage a dialog to take place in order to reach an immediate ceasefire or a reasonable ceasefire within a period of time, that the conditions for some stability to be established could perhaps be created and present—conditions that are obviously not going to be brought about by the continued military struggle that we find in El Salvador.

The suggestion that we make has been viewed by some as naive, and has been described as being too intrusive for this country to dictate that a dialog take place. However, we would emphasize that for the last 40 years we have been extremely intrusive in the dealings with the country. In fact, Ambassador Hinton, during a meeting with us, indicated that he, in effect, very strenuously conveyed the U.S. Government's opposition to have Mr. D'Aubuisson serve as the President of the country.

So I think that we have in fact indicated what the United States wants, and for the most part the El Salvadoran Government has followed that standard. So I think that we should be able to use our influence to bring about some dialog that would hopefully bring about some ceasefire.

That ceasefire, in our opinion, is extremely important if in fact you are going to provide humanitarian or economic development aid. For us to provide humanitarian or economic development aid at this time would be to in effect throw the money out the window. We are not assured that the humanitarian aid and economic development aid that we are giving is in fact going to bring about the institutional changes that we would like to see take place.

We have heard in the previous panel the desire to have some audit of how the money is expended, but I think there are a lot of other difficulties that bring to bear on the question of how the money is spent, and that is the fact that the political strife, the conflict, does not allow for proper expenditure and effective expenditure of humanitarian or economic development aid.

So our position would be that a dialog take place and, if not, at a minimum that there be an alteration in the certification process by this Congress and that Congress have the right to make the certification, as opposed to the President. And, at the same time, that there be additional criteria added to the certification that deals with the institutionalization of judicial improvements in the country.

Thank you very much.

[Mr. Torres' prepared statement follows:]

PREPARED STATEMENT OF ARNOLDO S. TORRES

On behalf of the League of United Latin American Citizens (LULAC), this country's oldest and largest Hispanic organization with over 100,000 members in 44 states, and as a representative of a community very concerned about our country's role in the violence and repression in the countries of our fellow Hispanics, I would like to express our appreciation to the Chairman and Subcommittee staff for having allowed us to present our views on the matter of Presidential Certification for United States (U.S.) aid to El Salvador.

The Hispanic community in the United States is concerned about what is happening in El Salvador and the United States' role in the war for many

reasons. Due to our background, we are more sensitive to and have a greater desire to understand the complexities of the situation than many Americans. We are also in many ways more directly influenced by the war than are most Americans. At a time when the economic situation and the President's economic programs are asking for sacrifices from us all, it is difficult to justify spending our tax dollars on a war which has no military solution. This is especially difficult to justify within the Hispanic community, which has had to disproportionately bear the burden of the present recession and economic program. The war in El Salvador also directly impacts our community in that it brings with it new Hispanic refugees to our border; refugees who are not welcome or even officially recognized as political refugees. There are some 150,000 to 200,000 undocumented El Salvadoran refugees in the United States. In Washington alone there are some 65,000, with more coming every day.

Between 1970 and 1980 the Hispanic community of this country grew by 61 percent, in part due to major movements to the United States of people from Central American countries. From March 1979 to March 1981, the number of Central or South Americans in the United States increased from 840,000 to 1,022,000, thus becoming the fastest growing Hispanic group of people. This becomes a cyclical problem. Our participation in the war in El Salvador pushes refugees to our border, which in turn helps create the climate for defensive, protective immigration policy and condemns El Salvadoran refugees to a life of fear.

It is indeed unfortunate that U.S. policy toward Latin America has been one of concern only when we feel a threat to our interests. Long-term stability and justice in Latin America are also in the best interest of the United States. In this regard it is imperative that we not treat these matters only when they are of crisis proportions, but that we develop ways of ensuring that they do not reach explosive levels. We should be supporting long term structural changes which will allow us all to live and prosper in peace, rather than wasting resources and human lives on a war which does not address the problems facing El Salvador.

When we asked an informed observer about the position of the Frente Farabundo Marti Para la Liberacion Nacional (FMLN)—Frente Democratico Revolucionario (FDR) in "the East/West scheme", he told us that 98 percent of the guerrillas have never read Karl Marx and that the 2 percent who have, did not understand him. He said that the guerrillas are fighting for only one thing: Change. El Salvador has been crying for a more equitable change since 1932 when hundreds of peasants participated in an uprising denouncing their conditions and 30,000 people were reported to have been killed. As recently as 1975, 40 percent of the rural population was totally landless. Today a cotton-picker who is strong and fast must work from sunrise to sunset and have access to a healthy crop in order to earn \$3.90 for a day's work (13 colones for 100 kilos of cotton). *Dallas Times Herald* Reporter Robert Rivard states that "inevitably, at the year's end, the peasant's cost of renting the land and borrowing (credit, tools, and seed) from the landlord equaled his annual earnings—as low as \$84 a year, according to a United Nations (U.N.) study of the poorest Salvadoran peasants."

The Government of the United States has recognized that to fight against change in El Salvador would be to fight in vain against the path of history, which is why the Administration has proposed that certain reforms be affected and that certification of certain improvements be approved before U.S. aid be granted. We believe that the reforms proposed by the Administration, although by no means inclusive, did touch upon some of the main areas of tension in El Salvador. One major area these reforms overlook is that of the judicial system. In speaking of the case of the American churchwomen killed in El Salvador, the *Washington Post* of January 19, 1983 states that "U.S. officials have said privately they have neither concrete leads nor the desire to pursue such issues (as the possibility of an original cover up of the murders and the possibility of those indicted for the murders being under order by superiors to commit the crime)." (*Washington Post*, January 21, 1983.) Until an effective judiciary system is established cases like this one will continue to abound.

While we approve of a certification process tied to military aid, few would dispute that certification is being used as a political tool to defend a predetermined objective, rather than as a criterion as it was understood to be. Through misuse it has become an obsolete tool, an insult to Congress and to the American people.

In our testimony, I would like to respond to three of the major criteria utilized by the U.S. State Department in justifying its Presidential Certification. These criteria are the following:

I. Human Rights.

II. Land Reform.

III. Commitment to the Holding of Free Elections.

I—HUMAN RIGHTS

The discussion of human rights in El Salvador is now one of body counts. Not only is such a discussion very difficult to treat mathematically or logistically, not only is it inappropriate and macabre; but it does not take into account the torture, terror and sadism which are not reflected in those numbers. On our most recent trip to El Salvador as part of the Commission on United States/Central American Relations, we witnessed burns across the back, chest and arms of a young professor being held as a political prisoner in Mariona. He had been burned with hydrochloric acid. Others of the delegation witnessed a young prisoner who had been castrated and a female victim whose body had been mutilated and whose breast had been removed. Yet these prisoners consider themselves the lucky few. It is only as of recently that political prisoners are held rather than assassinated, and then, those held are only those who are in the area of San Salvador. They are usually held without charge and without legal redress. Those who are not as fortunate may be tortured, raped, assassinated and mutilated. We saw pictures of one body after another decapitated or mutilated along the roadside. Many of the important moderating political influences are gone now. On January 21, 1983, the Washington Post reported that "whole labor and professional associations with leftist connections were, as (a foreign) official put it, 'decimated' by the death squads in 1980 and the early part of 1981."

The Salvadoran Government has responded to the human rights violations by forming an official human rights commission as prescribed in the "Pact of Apaneca." Yet when we visited this commission and asked for statistics and results of their work, they said they could not give us that information because it might put in jeopardy the security of those they are trying to help.

The Commission on Human Rights of the Organization of American States (O.A.S.) has again denounced the human rights situation in El Salvador in its annual report, and the United Nations' General Assembly passed a resolution this fall denouncing the violations of human rights and of fundamental liberties in El Salvador. The U.N. Commission on Human Rights repeated on January 31, 1983 its finding that the "rights situation (in El Salvador) continues to deteriorate."

One reason the condition continues to deteriorate is that many in El Salvador consider the American and internationally accepted human rights standards to be a burden rather than a controlling principle. Defense Minister Garcia speaks of human rights as an obstacle to the military in carrying out its objectives. On October 29, 1982 Ambassador Deane Hinton delivered a speech to the American Chamber of Commerce in which he suggested that Congress could stop United States aid from reaching El Salvador if the human rights conditions did not improve. The Salvadoran Chamber of Commerce, the Salvadoran Industrial Association and the National Free Enterprise Association were among those who responded to the Ambassador's speech by accusing him of intervening in internal Salvadoran affairs, of acting like a Roman proconsul and of wounding the country's national sovereignty and honor. If Salvadoran leaders cannot accept our standards, then they should not receive our tax dollars.

The Pastoral Center of the University of Central America summarizes the human rights situation in its letter of January 1-16, 1983 to the Catholic Church. It states that "if the words and language of men still have some meaning, the word 'improvement' cannot be used to express the assassination of over 5,000 men, women, children, and old people. . . . Only if the number of deaths were to become infinitely less and the assassinations were not to have a structural cause, could 'improvement' in human rights be discussed."

By trying to defend the incomprehensible human rights situation in El Salvador, the Administration is deteriorating our moral base and we are put in the situation of supporting a structure which negates our system of values. By supporting this decadence and sadism we are strengthening the validity of the guerrillas.

II—LAND REFORM

The land reform proposal was seen by some as a means to restructure the rural social environment and ease social tension. Although it had some initial success, it has become basically annulled. Phase One of the program involves the turnover of the country's 328 largest estates or 15 percent of the arable land, to the landless peasants who had been working the land. Thirty thousand of those peasants received more than a half million acres of land, which were turned into cooperatives. The government has reported that 45 of the farms have been "abandoned or placed out of production by the civil war" and one third of the remaining farms are in desperate shape. The government has been unable to compensate the previous owners or to finance the new cooperatives that lack equipment and technical skills.

Phase II of the program, the one that would have affected the greatest amount of land, was never put into effect. A New York Times article of May 24, 1982 said that "the demise of the second phase (of the agrarian reform) was expected in large part because it did not have the support of the Reagan Administration."

Phase III, known as the "land to the tiller" program, had the objective of allowing peasants to buy the properties they traditionally had had to rent. The program was never able to be carried out in areas affected by the war. Of the 58,152 peasants who have applied to buy the land they had rented, only 406 have received legal titles: 34,782 were given provisional ones with no legal value. Last spring thousands of the peasants with provisional titles were evicted from their newly acquired plots. This phase of the program expires March 3 and, according to one assembly deputy, "there is a feeling that the Reagan Administration will not oppose the program's termination, and the government of President Magaña is content to see it end."

III—COMMITMENT TO THE HOLDING OF FREE ELECTIONS

The military situation in El Salvador continues to escalate and the political situation continues to deteriorate. Guerrilla forces are apparently gaining ground, having captured Berlin on January 31 of this year, the largest city they have captured in the war, and there are accusations of Honduran troops of aiding El Salvadoran soldiers. The infighting within the military, which led to the ouster of Lieutenant Colonel Sigifredo Ochoa and has apparently weakened the role of Defense Minister Guillermo Garcia, has been followed by the collapse on January 27th of this year of the coalition led by Mr. Robert D'Aubuisson which had dominated the legislative assembly. This, in turn, has led to death-threats against moderate politicians in the legislative assembly.

This chaos is evidence of the fact that the elections of last year did not bring about the kind of political stability the Reagan Administration had led us to believe it might. One must ask what the Administration hoped to foster in encouraging an election that did not fully represent the political factions in El Salvador and which made no concerted effort to integrate the leftist groups. Was it indeed an effort towards democratization, or was it an effort to legitimize opposition to the guerrillas? In his report for the Parliamentary Human Rights Group, the British observer Lord Chitnis wrote the following:

"It was known to all, and in particular admitted to me by a senior Government Minister, that the main reason for having the election at the time was pressure from the United States . . . It did not occur to him (American Ambassador Deane Hinton) that the election would make matters worse, as in the event it did by producing a far Right majority in the Constituent Assembly, and this was a dreadful misjudgment."

There seems to be some doubt as to whether or not elections will indeed take place next year as the U.S. Government had encouraged, but should elections take place and should the El Salvadoran people be asked again to join in an effort to become part of the political process, we must insist that the FMLN/FDR be represented. This is a very difficult request to make in a situation where opponents or suspected opponents of the established military/governmental regime are "disappeared," imprisoned, exiled or receive death threats. However, it is vital if there is to be a political alternative to the civil war in El Salvador. The FMLN/FDR has stated before the General Assembly of the United Nations on October 7, 1981 that their fronts "consider elections a valid and necessary instrument of expression of the people's will whenever conditions and atmosphere exist that allow the people to freely express their will."

CONCLUSIONS AND RECOMMENDATIONS

The General Assembly of the United Nations among others has asked that we "suspend all military shipments and all military aid" to El Salvador. LULAC is aware that cutting off aid to El Salvador's government is a delicate proposition in view of the responsibility we, the United States, have created for ourselves through our historical involvement and due to the likelihood of the Soviet Union's influence in the situation, should the situation become more vulnerable to such influence. We believe, however, that only by upholding our ideals and insisting that United States aid be used under conditions acceptable to the American people, can the situation in El Salvador improve and the relationship between El Salvador and the United States prosper.

We agree with the Administration that El Salvador's situation is strategic and precedent-setting. The unrest in El Salvador is not unlike that in Guatemala or the unrest which remains mostly latent in our neighboring country, Mexico. It is precisely for that reason that we must use our resources to encourage true stability in the area by supporting self-determination and by supporting long-term structural changes to answer the social unrest. LULAC suggests that, should Congress decide to continue the certification process rather than simply stopping military aid, the following changes take place:

(1) The certification process has been misused and has become macabre. Many Salvadoran and American military and government officials have used the process for their own agendas. *Congress should take an appropriate, well-deliberated position through the appropriations procedure and through a more active role in the certification process*, such as having to approve rather than merely receive certification.

(2) Although we recognize that an immediate stop to military aid may or may not be feasible, we are convinced that our military support is not presently perceived as conditional, but rather as guaranteed, that *there is no military answer to the war in El Salvador, and that the death and suffering in El Salvador can and must be curbed through political avenues*.

(3) It has been said that the civil war in El Salvador depends more upon what happens in Washington than anything that happens in Chalatenango or Morazan. We should use our leverage to truly help stabilize the situation by joining with Costa Rica, Mexico, Venezuela, France, the United Nations, Pope John Paul II, Archbishop Rivera y Damas, and the few remaining intellectual and human rights organizations in El Salvador in a call for an immediate dialogue and/or negotiations. The United States could facilitate this possibility by opening political doors to the FDR and through making such dialogue and the guaranteed participation of the FDR in the next elections stipulations to be included in certification. Dialogue, therefore would have as its objective a ceasefire and a paving of the way for elections in which all political factions are guaranteed representation.

The CHAIRMAN. Thank you very kindly for a fine statement.

Finally, Dr. Howard J. Wiarda, American Enterprise Institute, Center for Hemispheric Studies.

STATEMENT OF DR. HOWARD J. WIARDA, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF MASSACHUSETTS/AMHERST AND RESIDENT SCHOLAR AND DIRECTOR, CENTER FOR HEMISPHERIC STUDIES, AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, WASHINGTON, D.C.

Mr. WIARDA. Thank you, Mr. Chairman.

The debate over U.S. policy in Central America, and now specifically with regard to the certification of El Salvador, has been long, arduous, increasingly tumultuous—and often unfocused, unsatisfactory, and more a reflection of U.S. domestic politics than of the realities of Central America.

On the one side are lined up various human rights groups, dedicated and sincere though not necessarily representative of mainstream pub-

lic opinion, who often unfortunately have little indepth knowledge of El Salvador and whose criteria of human rights are sometimes so pristine as to be entirely unrealizable in the real world, certainly in the El Salvadoran one and most likely even in the United States.

One sympathizes with the goals of a vigorous human rights policy while also wondering about the standards set and whether there are not other American interests to which we ought also to give attention.

On the other side is the administration whose policy is under assault and whose efforts to certify progress in difficult countries like El Salvador lead to disputes, unsatisfying arguments over terms and figures, mutual suspicions, and considerable hyperbole. One group posits standards that are all but impossible to meet; the other is forced to argue that El Salvador is in the process of becoming "just like us"—which it assuredly is not.

Where in all this posturing and verbal overkill is there room for a sound, reasonable, and prudent course on which some coherent policy consensus can be based?

A good beginning point for the discussion is a recognition that the social and political processes of a country like El Salvador do not conform to our norms—neither those of the human rights groups nor the same categories often used in response by the administration.

Second, what is required is a policy that is true to our values and interests, that provides policymakers and politicians with some realistic handles on which they can grasp, and which offers a balanced and prudent politically acceptable perspective on events in El Salvador.

It is my purpose to try to provide a more realistic analysis of El Salvador and also a set of policy recommendations that are prudent, moderate, politically acceptable, and that take account of the difficult choices we must make.

For policy to be successful, it must be based on realistic understandings of countries like El Salvador. Let us try to summarize briefly only some of the features that Americans find difficult to grasp. There follows a postgraduate course in El Salvador, a Latin American politics course.

First, a political culture of violence. Like Cuba historically, El Salvador has had a long tradition of political violence. The country has had more deaths per capital from political violence than any other in Latin America.

Such endemic, persistent violence is very difficult for Americans to understand or come to grips with. The entire political culture—governance, challenges to it, the circulation of new and old groups in and out of power—is based on the display and use of violence. We may not condone such violence, but we cannot wish it away.

In this context, statements such as those in the press recently that we cannot certify El Salvador until there is "not one single death from violence" are entirely unrealistic.

If a personal anecdote might be in order, Senator, I recall traveling through the El Salvadoran countryside some years ago, before the present cycle of violence began, on a hot day on a public bus with the windows all open and my arm hanging out the window. The bus driver purposefully made a stop, came back to my seat and told me to keep my arm in the window because those campesinos with their machetes,

you know, have a way of hacking off various extensions that may lean out of bus windows.

Second, civil-military relations. Civil-military relations in El Salvador are fundamentally different from those in the United States. First, there is no strict separation between the civilian and the military spheres, and there is widespread legitimacy for military involvement in politics.

Second, the military is a distinct institution, separate from and not necessarily inferior to civilian authority, legally and constitutionally, with its own rules as well as courts.

Third, democracy and elections. Democracy and elections are relative terms in El Salvador and not absolute. They convey tentative legitimacy, not a definitive right to rule for a given period. Nor are democracy and elections viewed as the only route to power. There are other routes as well.

The political process is, therefore, fluid; and hence moralistic arguments about democracy and dictatorship are not always useful to understanding these dynamics, nor is the democracy-dictatorship dichotomy, and the artificial either/or choice between them always helpful in comprehending the mucky halfway houses that the Salvadorans themselves have a genius for improvising.

Fourth, human rights. I want to suggest that human rights frequently mean something different in El Salvador than they do in the United States. There are universal criteria of human rights, but there are also culturally distinct nuances in meanings. We need to know, therefore, how and when and with what implications El Salvador violates its own criteria of human rights as well as when it violates our own or universal standards.

Legal processes, fifth. Here too, the differences are great and the potential for lack of comprehension significant. El Salvador is a code law country as distinct from our common law tradition and the political and legal implications of that are major. Nor is it possible in El Salvador to insulate entirely the judicial process from politics or even from intimidation in a general political culture of violence.

And much the same thing is valid with regard to land and other reforms, which mean something different in El Salvador or carry other implications or may work differently than in the United States. These comments are elaborated more fully in my formal statement. They obviously require greater discussion than is possible here to help place El Salvador in some context. They are offered not to excuse or to justify the present system but, rather, to enable us better to understand it.

The paper proceeds to a discussion of the present situation in El Salvador, which is exceedingly tense. The armed forces have been fragmented. The political system is exceedingly shaky. The paper suggests five possibilities, a few of which are very attractive but some are less attractive than others, ranging from a military victory of the left to a political solution or negotiated settlement, third a consolidation and expansion of the center, fourth the status quo ante of a real right wing regime, and, fifth, a military victory by the right.

But let me proceed to a number of policy recommendations, again very briefly.

The problems in El Salvador are exceedingly complex. There is no easy out. The present course seems uncertain and may not work. But in general it seems better than the other main alternatives, a guerrilla takeover or a real, unmitigated rightwing regime.

If one thinks that El Salvador is in bad shape now, consider the alternatives of a real rightwing government that seeks to turn the clock back and loses all popular support, a distinct possibility. Or of a guerrilla takeover that allies itself with Cuba and Nicaragua, spreads further upheaval to Honduras and Guatemala, becomes another economic basket case, and sends streams of hundreds of thousands of refugees toward the United States by way of already overburdened Mexico.

I think we must continue to try to find and support moderate and centrist elements in El Salvador. Whether such a center can be created in the long run, however, is open to question.

Nevertheless, the process must be kept open. I think the United States is presently overcommitted in El Salvador. I worry about the Embassy's efforts to play essentially a proconsular role and I have considerable faith in the capacity of El Salvadorans to find some crazy quilt and ad hoc series of solutions to their own problems, often quite independent of U.S. actions.

It is not an easy decision, but on balance I think we must stay the course in El Salvador—at least for now. Option 3, supporting and strengthening the center, still seems to be the best and most hopeful policy. I think we must continue assistance, at least for now. And I think we must certify—at least for now.

It is the only government that exists in El Salvador, it is to a certain extent a government of our creation, the abandonment of which would have severe repercussions. It has shown some progress, and the other alternatives seem even less acceptable. I do not believe we can abruptly abdicate our capacity to exercise influence in El Salvador.

Nevertheless, policy must respect the majesty of facts. It is unlikely that U.S. domestic political pressures will permit many more certifications of the El Salvadoran Government as it presently exists. The internal reforms the administration hopes for in El Salvador—military professionalization, the reorganization of the center, agrarian and other reforms, a more effective government—may prove to be phantoms.

Mr. Chairman, with your indulgence, could I have about 30 more seconds to complete this?

The CHAIRMAN. Yes.

Mr. WIARDA. I believe the certification should be approved, but that it should be made conditional and that we must be prepared to be flexible. The United States should begin to reduce its presence in that beleaguered country. At the same time, U.S. diplomacy and initiatives should be undertaken to insure that other outside forces cannot meddle in El Salvador's internal affairs.

Then, should the main props of the U.S. strategy begin to crumble, should the El Salvadoran military not prove reformable, should the center not emerge as we hope, the reforms be frustrated, the Government prove ineffective, and should the left demonstrate greater strength than anticipated, the United States should be prepared realistically to adjust.

At that stage, option 2, a "negotiated settlement" or a "political compromise" will have to be reexamined. There are a variety of avenues. Or, it may be that El Salvador will have to resolve some of its own problems in its own ways, with a somewhat more limited hovering presence by the United States.

In all these considerations, finally, it is facts, not romance, that must govern our decisions. We must not romanticize the guerrillas or the idea of a "negotiated settlement." At the same time, the administration cannot romanticize the presumed "progress" of the El Salvadoran regime. Hard reality, pragmatism, and continued adjustment and fine tuning of policy are necessary. In the meantime, I think it behooves us to reexamine both our overall Latin American policy and the assumptions and requirements of this certification process, which also seems in many ways to be unsatisfactory.

Thank you for your indulgence, Mr. Chairman.
[Mr. Wiarda's prepared statement follows:]

PREPARED STATEMENT OF DR. HOWARD J. WIARDA

BIOGRAPHICAL STATEMENT

Howard J. Wiarda is Professor of Political Science at the University of Massachusetts/Amherst, and Resident Scholar and Director of the Center for Hemispheric Studies of the American Enterprise Institute for Public Policy Research, Washington, D.C. Prior to joining AEI he was Visiting Scholar at the Center for International Affairs at Harvard University, 1979-81; Visiting Professor at MIT; Editor of the journal *Polity*; and Director of the Program in Latin American Studies of the University of Massachusetts. His books include *Politics and Social Change in Latin America*, *The Dominican Republic*, *The Brazilian Catholic Labor Movement*, *Latin American Politics and Development*, *Human Rights and U.S. Human Rights Policy*, *The Continuing Struggle for Democracy in Latin America*, and *Corporatism and National Development in Latin America*. He has traveled extensively throughout the area, has lived for extended periods in a number of Latin American countries, and has been studying the area professionally for more than twenty years.

The statement that follows is purely an individual one based upon his research and experience in Latin America, and is not necessarily the view of the organizations with which he is affiliated.

The debate over United States policy in Central America, and now specifically with regard to the certification of El Salvador, has been long, arduous, increasingly tumultuous—and often unfocused, unsatisfactory, and more a reflection of United States domestic politics than of the realities of Central America.

On the one side are lined up various human rights groups, dedicated and sincere though not necessarily representative of mainstream public opinion, who often unfortunately have little indepth knowledge of El Salvador and whose criteria of human rights are sometimes so pristine as to be entirely unrealizable in the real world, certainly in the El Salvadoran one and most likely even in the United States. One sympathizes with the goals of a vigorous human rights policy while also wondering about the standards set and whether there are not other American interests to which we ought also to give attention.

On the other side is the Administration whose policy is under assault and whose efforts to certify progress in difficult countries like El Salvador lead to disputes, unsatisfying arguments over terms and figures, mutual suspicions, and considerable hyperbole. One group posits standards that are all but impossible to meet; the other is forced to argue that El Salvador is in the process of becoming "just like us"—which it assuredly is not. Where in all this posturing and verbal overkill is there room for a sound, reasonable, and prudent course on which some coherent policy consensus can be based?

A good beginning point for the discussion is a recognition that the social and political processes of a country like El Salvador do not always conform to our

norms—neither those of the human rights groups nor the same categories often used in response by the Administration. In this confusion and talking past each other, the certification process and presumptions themselves sometimes seem part of the trouble—but that is another story. We need to understand El Salvador realistically and on its own terms, not just through United States lenses.

Second, what is required is a policy that is true to our values and interests, that provides policy-makers and politicians with some realistic handles on which they can grasp, and which offers a balanced and prudent politically acceptable perspective on events in El Salvador. It is difficult not just morally but also politically, let us recognize, to support any regime that rapes and murders nuns and others. Yet it is a regime we feel we cannot abandon for fear of a Fidelista-style takeover.

The dilemma in our policy toward El Salvador is remarkably similar to that faced by John F. Kennedy in the Dominican Republic in 1961. The President said:

"There are three possibilities in descending order of importance: a decent democratic regime, a continuation of the Trujillo regime, or a Castro regime. We ought to aim at the first, but we really cannot renounce the second until we are sure that we can avoid the third."¹

With only the names changed, that is precisely the problem we face in El Salvador.

It is my purpose to try to provide a more realistic analysis of El Salvador, and also a set of policy recommendations that are prudent, moderate, politically acceptable, and that take account of the difficult choices we must make.

For policy to be successful, it must be based on realistic understandings of countries like El Salvador. A number of human rights groups have erected a Procrustean bed of idealistic standards based almost exclusively on the United States model. Ethnocentrism is also alive and well in the U.S. Government. Both approaches blur the realities of El Salvador. Let us try to summarize briefly only some of the features that Americans find difficult to grasp.²

1. *A political culture of violence.* Like Cuba historically, El Salvador has had a long tradition of political violence.³ The country has had more deaths per capita from political violence than any other in Latin America. Such endemic, persistent violence is very difficult for Americans to understand or come to grips with. The entire political culture—governance, challenges to it, the circulation of new and old groups in and out of power—is based on the display and use of violence. We may not condone such violence but we cannot wish it away. In this context, statements such as those in the press recently that we cannot certify El Salvador until there is "not one single death from violence" are entirely unrealistic.

2. *Civil-military relations.* This is also difficult for Americans to understand, but civil-military relations in El Salvador are fundamentally different from those in the U.S. First, there is no strict separation between the civilian and military spheres, and there is widespread legitimacy for military involvement in politics. Second, the military is a distinct institution, separate from and not necessarily inferior to civilian authority legally and constitutionally, with its own rules as well as courts. No mere civilian court can expect to have jurisdiction over the military especially in conditions of civil war; nor can any mere civilian government expect entirely to control military activities. When we condemn human rights abuses by "the government" of El Salvador, therefore, we must be careful to distinguish between the civilian and the military spheres since they are not necessarily the same, between the various services and factions within the military, and between the regular military and the several para-military and "uncontrollable" forces. Blanket condemnations of the whole government or the whole military are likely to be self-defeating, since they are viewed as insults and demeaning of the national honor.

¹ Arthur F. Schlesinger, Jr., *A Thousand Days: John F. Kennedy in the White House* (Boston, MA: Houghton-Mifflin, 1965) 769-70.

² More detailed treatment is provided in Howard J. Wiarda, *The Continuing Struggle for Democracy in Latin America* (Boulder, CO: Westview Press, 1980); *Politics and Social Change in Latin America* (Amherst, MA: University of Massachusetts Press, 1983); and *Latin American Politics and Development* (Boston, MA: Houghton-Mifflin, 1979), with Harvey F. Kline.

³ Two classic studies are William F. Stokes, "Violence as a Power Factor in Latin American Politics," *Western Political Quarterly*, V (September 1952) 445-68; and Merle Kling, "Violence and Politics in Latin America" in Paul Halmos (ed.) *The Sociological Review*, No. 11 (Keele: Staffordshire: University of Keele, 1967) 119-32. See also Howard J. Wiarda, *Critical Elections and Critical Coups: State, Society and the Military in the Processes of Latin American Development* (Athens: Center for International Studies, Ohio University, 1979).

3. *Democracy and elections.* Democracy and elections are relative terms in El Salvador, not absolutes. They convey tentative legitimacy, not a definitive "right to rule" for a given period. Nor are democracy and elections viewed as the only route to power; coups and revolutions, in a political culture of violence, can also achieve legitimacy. The political process is therefore fluid and on-going: witness both the U.S. efforts to modify the 1982 election results by isolating and bypassing conservative leader Roberto D'Aubuisson, and the *pronunciamiento*, issued by Colonel Sigifredo Ochoa in January 1983. Highly moralistic arguments about democracy and dictatorship are not always useful for understanding these dynamics, nor is the democracy-dictatorship dichotomy and the artificial either-or choice between them always helped in comprehending the murkier "half-way houses" that the El Salvadorans themselves have a genius for improving.

4. *Human rights.* Human rights frequently mean something different in El Salvador than in the United States.⁴ There are of course universal criteria of human rights, but there are also culturally-distinct nuances and meanings. Moreover there are in distinct cultures different levels of importance accorded the laws relating to human rights, and also different kinds of human rights—political, social, economic, of the human person (the last being the most universal and hence for which one might have the greatest expectations of achieving success). These distinctions are seldom acknowledged in our discussions of human rights. We need to know, therefore, how and when and with what implications El Salvador violates *its own* criteria of human rights as well as when it violates our own or universal standards. When that country or its government goes beyond the pale by its own standards (as sometimes distinct from ours), then we know that government is likely to be in trouble—for example, the Somoza regime in its later years.

5. *Legal processes.* Here too, differences are great and the potential for lack of comprehension is significant. El Salvador is a code law country, as distinct from our common law tradition; and the political and legal implications of that are major.⁵ Nor is it possible in El Salvador to insulate the judicial process from politics, or from intimidation in a general political culture or violence. In part, these factors help explain the terrible frustrations American groups and families have frequently experienced when trying to ensure that justice is carried out in some notable and tragic instances.

6. *Land and other reforms.* It is difficult to carry out a coherent agrarian reform in El Salvador in the midst of civil war. Even more basic, the distinction between private- and public-regardingness in various policy areas in that country is never so clear-cut as we presume it to be in the United States. Only when the private house is secure and in order can the public weal be served. That statement, admittedly exaggerated, carries major implications for what we can and cannot reasonably expect in various public policy areas to emanate from the El Salvadoran Government.

These comments, which obviously require greater refinement and elaboration than is possible here, help place the El Salvadoran political process in context. They are offered not to excuse or justify the present system there but to enable us better to understand it. Sound policy can only be based on sound understandings, on El Salvador's own terms and in its own context, of these processes at work. To this point, however, policy prescriptions have tended to be based on ethnocentric notions. I would hope a deeper comprehension could be achieved.

POLICY OPTIONS

The present situation and some new realities.

The present situation in El Salvador is exceedingly tense. The guerrillas seem again to be on the offensive and to be scoring some gains. To them a "gain" can be defined minimally as maintaining the status quo from which the United States will almost certainly tire.

The armed forces have been fragmented and weakened by the *pronunciamiento* of Major Ochoa and other centrifugal forces. The military officers' meaning of "professionalism" remains different from our own. Their expectations of their roles as military officers and in El Salvadoran society are also at variance from ours.

⁴ For elaboration see Howard J. Wiarda, "Democracy and Human Rights in Latin America: Toward a New Conceptualization" *Orbis*, 22 (Spring, 1978) 137-60; also *Human Rights and U.S. Human Rights Policy* (Washington, D.C.: AEI, 1982).

⁵ See Kenneth Karst and Keith S. Rosenn, *Law and Development in Latin America* (Berkeley, Calif.: University of California Press, 1975).

The political system is also exceedingly shaky. The government enjoys tenuous legitimacy. Political parties and other institutions are very weak. The depressed economy adds to the troubles. A strong center has not emerged. Serious questions must be asked about how flexible the El Salvadoran system is, how much more pressure it can take before it disintegrates, how pure must it be before it satisfies our sometimes rarified notions of proper behavior. Under even greater American pressure a further unraveling and disintegration of that system, both civilian and military—with all the Saigon-like potential for disaster that implies—is not a remote possibility.

I see five possibilities.^{*} Few of them are very attractive, but some are less attractive than others. Few offer greater hope of a finally happy solution, but some offer greater hopes than others. The El Salvador case is one where we must choose not between ethical good and ethical bad but among lesser evils. Even then, the chances of success are not overly great. The present course is fraught with actual and potential dangers and possible missteps. Unfortunately the alternatives seem even worse.

The five possibilities are:

1. *Military victory of the left.* But the left has not demonstrated that it enjoys widespread support, of peasants or others. It was repudiated in the 1982 election. It is having trouble finding new recruits and has had to rely in part on intimidation and impressment. It has few permanent or effective bases in the countryside or in urban areas. It has not won any significant military victories. Its capacity to govern is minimal. It has been stalemated and to some degree isolated. And "another Cuba in the Caribbean" would not be acceptable to this administration or likely, some other. The left's only chances for success depend upon the United States pulling out, or its inclusion in a coalition as a result of Possibility No. 2.

2. *"Political solution" or "negotiated settlement."* Attractive because it promises to end the war and get the United States out. But that assumes the present institutions do not enjoy considerable legitimacy and can be easily replaced; it also gives the guerrillas a place in the system they have not heretofore shown they deserve, by electoral mandate or other demonstrated support. Moreover such a "settlement" would likely only represent a temporary respite in the war and would surely lead to renewed violence and more civil strife. Such a "political solution" imposed from the outside would itself be highly unstable. And if as seems likely, the subsequent political system does degenerate further it might call forth an American involvement even greater than that at present. This option has a superficial attractiveness but it invites as many future problems—perhaps more—as it resolves.

3. *Consolidation and expansion of the center.* This is, at present, the most desired U.S. outcome. But it assumes that there is a center (both civilian and military), that the armed forces can be reformed, that the center political parties (i.e., the Christian Democrats) can be reconstituted, that moderate and willing leaders can be found, that viable reforms can be successfully carried out. These are all big assumptions. None may work out.

Nevertheless this option provides several straws to hang on to. It offers some hope and there are encouraging signs. We will never get the military out of politics but there are indications it now sees the bigger picture. The elites are so scared of the guerrillas that they are willing to listen and bend. Major D'Aubuisson and his friends have been neutralized to some degree. The Christian Democrats are making a comeback and establishing new ties with the peasants. The political system is not well institutionalized but it has not fallen apart and there are signals of increased viability. One cannot be overly optimistic but there are tendencies that can be coaxed along.

These trends enable us to exercise influence in a positive and constructive way. They build in a needed reward system for improved conditions. And they give us time and possibilities. That is not a lot, nor does it constitute a great vision. But it does provide an acceptable handle and something to work with. And it does seem better than the other alternatives. It is also the most difficult option to carry out.

4. *The status quo ante—i.e., a reactionary military regime or rule by the oligarchy.* Some critics would argue that is what exists at present. In fact, the

^{*}The categories and the analysis that follows are derived in large part from a paper written by Margaret Daly Hayes, "Coping with Problems that Have No Solution: Political Change in El Salvador and Guatemala," in Alan Adelman and Reid Reading (eds.) *Stability/Instability in the Caribbean Basin* (Pittsburgh, Pa.: University of Pittsburgh Press, 1983). The present statement only briefly summarizes her more detailed and penetrating analysis. The conclusions reached, however, are my own and not those of Dr. Hayes.

possibilities for a real right wing takeover are stronger than those posed by the left. Such a regime would negate or roll back all the reforms accomplished so far. It would likely be unacceptable to the American public and to Congress. Its assistance would dry up. It would polarize El Salvador to a degree that does not exist at present. It would leave the country isolated and ostracized.

5. *Military victory by the Right.* It seems unlikely the El Salvadoran military by itself can win such total victory. The costs are prohibitive, and who would pay? The United States seems unlikely to commit its own military forces to El Salvador in ways that would ensure victory. Even should it do so, victory may be elusive. The problems of stability and legitimacy would not be resolved.⁷

POLICY RECOMMENDATIONS

The problems in El Salvador are complex. There is no easy out. There may not be any lights at the end of the El Salvadoran tunnel.

The present course seems uncertain and may not work. But in general it seems better than the other main alternatives, a guerrilla takeover or a real, unmitigated right-wing regime. If one thinks that El Salvador is in bad shape now, consider the alternatives of a real right-wing government that seeks to turn the clock back and loses all popular support. A distinct possibility. Or of a guerrilla takeover that allies itself with Cuba and Nicaragua, spreads further upheaval to Honduras and Guatemala, becomes another economic basket case, and sends streams of hundreds of thousands of refugees toward the United States by way of already overburdened Mexico.

I think we must continue to try to find and support moderate and centrist elements in El Salvador. Whether such a center can be created in the long run, however, is open to question.

However the process must be kept open. I think the United States is presently over-committed in El Salvador; I worry about the embassy's efforts to play essentially a proconsular role; and I have considerable faith in the capacity of El Salvadorans to find some crazy-quilt and ad hoc series of solutions to their own problems, often quite independent of United States actions.

It is not an easy decision, but on balance I think we must stay the course in El Salvador—at least for now. Option 3 still seems to be the best and most hopeful policy. I think we must continue assistance—at least for now. And I think we must certify—at least for now. It is the only government that exists in El Salvador, it is to a certain extent a government of our creation the abandonment of which would have severe repercussions, it has shown some progress and the other alternatives seem even less acceptable. I do not believe we can abruptly abdicate our capacity to exercise influence in El Salvador.

Nevertheless policy must respect the majesty of facts. It is unlikely that United States domestic political pressures will permit many more certifications of the El Salvadoran Government as presently existing. The internal reforms the Administration hopes for in El Salvador (military professionalization, the reorganization of the center, agrarian and other reforms, a more effective government) may prove to be phantoms. The left in El Salvador may demonstrate a sufficient power capability that the armed forces and the right may feel a need to reach an accommodation with it.

I believe the certification should be approved, but that it should be made conditional and that we must be prepared to be flexible. The United States should begin to reduce its presence in that beleaguered country. At the same time, United States diplomacy and initiatives should be undertaken to ensure that other outside forces cannot meddle in El Salvador's internal affairs.

Then, should the main props of the U.S. strategy begin to crumble, should the El Salvadoran military not prove reformable, should the center not emerge, as we hope, the reforms be frustrated, the government prove ineffective, and should the left demonstrate greater strength than anticipated, the United States should be prepared realistically to adjust. At that stage Option 2, a "negotiated settlement" or a "political compromise," will have to be reexamined. There are a variety of avenues. Or, it may be that El Salvador will have to resolve some of its own problems in its own ways, with a somewhat more limited hovering presence by the United States.

In all these considerations, finally it is facts not romance that must govern our decisions. We must not romanticize the guerrillas or the idea of a "negoti-

⁷ See the perceptive analysis of Jeane J. Kirkpatrick, "The Hobbes Problems: Order, Authority, and Legitimacy in Central America" in *AEI Public Policy Papers* (Washington, D.C.; AEI, 1981) 127-37.

ated settlement"; at the same time the Administration romanticize the presumed "progress" of the El Salvadoran regime. Hard reality, pragmatism, and continued adjustment and fine-tuning of policy are necessary. In the meantime, I think it behooves us to reexamine both the assumptions of many aspects of our overall Latin American policy,⁸ and the assumptions and requirements of this certification process, which also seems in many ways to be unsatisfactory.

The CHAIRMAN. Thank you very much.

Senator Dodd, I have patiently watched you be so patient for 2 years now, always at the end of the line. There are just two of us here. Instead of being Hertz, why don't I be Avis and why don't you be Hertz and start off?

Senator Dodd. Thank you, Mr. Chairman. I am not going to take much time.

First of all, I commend all of our panel here for their statements and I notice that Mr. Araujo, my co-TV star—we appear quite often together on TV shows—is with us this afternoon. I particularly want to commend you, Dr. Wiarda, for your statement. I think it is a very intriguing and you made some good suggestions.

Mr. WIARDA. Thank you.

Senator Dodd. I am comfortable with a lot of what you said. In fact, you sort of capture in a sense my own feelings about this. This morning Secretary Enders said we need a third choice. We have two choices. Well, I have never suggested that there is not a third choice through all of this.

The difficulty I have had, and I tried to express it this morning with the administration, is that there is a lack of credibility in the certification process because I think there is an assumption that regardless of what the circumstances are there is going to be a blanket certification. I presume there is a presumption on the part of some that I will automatically oppose a certification and that I will insist there is not any improvement in any areas. I have never made that suggestion. There have been improvements and I commend those.

I wish the administration would be more balanced in its certification. A lot of people misunderstand the certification process to begin with. When that was drafted, it was basically set up in a way to allow the debate to go back and forth and to use some leverage and hopefully have some influence on policies. We do not vote on certification in Congress. We have no vote whatsoever on certification.

I have read more stories about whether or not Congress is going to vote to uphold the certification. There is absolutely nothing included in that legislation which gives us any right to vote up or down on certification—never has. We can vote to increase or decrease assistance of one kind or another, but that has nothing to do with certification other than what information may be forthcoming as a result of having hearings like this one.

But I constantly read newspaper articles and read reports about how Congress may vote or not vote to certify. They have never done that at all and, frankly, had the administration come in, and said well, there has been some improvement on the human rights area, it would appear, maybe not much improvement in disappearances, some im-

⁸ An attempt to set forth the parameters of what I have termed a "prudence model" of U.S. Latin America policy is set forth in two recent papers: "The United States and Latin America: Change and Continuity," in Adelman and Reading (eds.), *Stability/Instability in the Caribbean Basin*; and "Conceptual and Political Dimensions of the Crisis in U.S.-Latin American Relations: Toward a New Policy Formulation," in *The Crisis in U.S.-Latin American Relations* (Washington, D.C.: AEI, 1983).

provement in deaths, it would appear, land reform improvements and applications, not much improvement in provisional titles, no improvement in phase II, some improvement in phase III, and given us that kind of a report, I feel far more comfortable with their analysis.

I think there would be far more credibility with the administration's position than to come in and say basically there has been improvement in every area. And that is where I think they run into real difficulty, so I really do not have any specific questions for you.

You have all sort of stated your opinions on certification generally, where you would come down on this issue.

Two of you made some very concrete recommendations. I might ask the other two witnesses if they have any ideas of how we might take the certification process and add to it and go beyond certification. What ought we be doing in conjunction with the administration to try to achieve the kind of political resolution that we all seem to accept must be the case? What ideas might you share with this committee in that regard?

Mr. ARAUJO. I think we should concentrate on looking toward what we would expect in the next 6 months to sort of outline what—how we can better measure progress in El Salvador and actually tell the Salvadoran Government what is expected.

I think there is a tremendous amount of confusion with so much influence into what we expect of them. They really do not know what we expect, so I think improving or setting out an agenda, the Government plans and is trying very hard to get an amnesty program going. I think that would be one step in the direction of approaching the question of dialog, first of all, finding some kind of viable amnesty, a credible amnesty and helping in that sense to promote.

Now the actual time lapse of the evaluation, to me it is questionable. I would be more in favor of over a year's time to give sufficient, or within that period of time, sufficient for crops, sufficient for the political system to develop in a way where a year from now you would be able to judge, has El Salvador's political system opened up to all the viable players that want to participate in that system. Have they actually made that commitment?

Has the violence actually stopped? Economically what has happened to El Salvador in a year's time, because economically I think it is a very—to Salvadorans I see the economic situation far greater than what human rights are, in their point of view. They have to struggle to survive from day to day, to have food, to have clothing.

So if we can outline within the limits of what can be expected and get the message and make it a lot clearer and get the administration's stance on that, I think it would be helpful.

Senator DODD. Thank you.

Mr. TORRES. We made two suggestions, but to respond to your overall presentation, Senator Dodd, I think it is fine to talk about the difficulties that one has with the credibility of the administration concerning certification. It is fine to discuss what can we do to give some legitimacy to certification.

But I think the point that Dr. Wiarda indicated, that we try to somehow flush out the moderate elements within the country of El Salvador, is not very valid for we have tried to do that for a year now.

You indicate that there are some improvements in one area of land reform as opposed to the others.

But I think the question that has to be asked if we are really going to achieve some type of permanent stable change, is if that change is being institutionalized. I do not think it is. There is no infrastructure to the land reform program. There is no effective followthrough in providing proper training, proper equipment for the peasants who own the land.

There is no infrastructure to the judicial system. There is no infrastructure in the military courts prosecuting those servicemen found to be violating human rights.

So I think that if we continue to debate and to analyze and to assess the situation from an extremely cosmetic perspective, which is what, in our opinion, we have done for the last year, then we are going to wait maybe 5, 6 years before the middle or moderate political elements mature. I think the only thing that can reasonably be done, because of the leverage that this country has in that region, is to bring about a dialog to advocate a process which will bring the conflicting sides together to discuss a political solution.

I believe it is reasonable to assume that both sides will benefit from a dialog. Aid, humanitarian and economic development, is not going to be effectively extended by a government under conditions of war. I do not see how you are going to assure that refugees along the Honduran or Nicaraguan border or even the Dispacados, the displaced inside San Salvador are not going to be harrassed by the military unless there is some ceasing in the intensity of the conflict.

Senator Dopp. I do not disagree with you on that, but that is my point. I can recite the litany of everything that is wrong as well as anybody. I know what that list looks like. What I am trying to get at is what we have been trying really has not worked that well and it seems that we have got to come up with something else.

I am a great believer that you can sit here, certainly—and I am not going to disagree with you—preaching to the choir on some of those things. My question is how do we get beyond that, talking about a dialog, for instance. There is not going to be any dialog in all of that country for the simple reason that there is no dialog among the non-insurgent groups.

They cannot decide what they want. They are virtually rearranging the deck chairs on the Titanic; that is the only way I can describe it, arguing with each other about what they ought to be doing. So it is a nice notion to have a dialog, but I do not know what is going to be the position of the noninsurgent forces. They do not even seem to have a position.

Let me add something on the Mexicans. I think the Mexicans have got to play a key role, but I think one of the myths is that Mexico has a lot of influence in the region. There are many complaints about Mexicans in the region. You talk to Guatemalans, Costa Ricans, El Salvadorans. There are a lot of complaints about Mexico.

I think they can play a key role, but I think it is vastly overestimating their influence to assume that they are loved in Central America. They are called the Colossus of the North in Guatemala. So when we talk about the Mexicans, they can play a key role, but I would not overestimate their influence in this whole discussion.

Mr. TORRES. I hope you do not misinterpret our interest as simply preaching to the choir or suggesting something that is unreasonable, nor is it unattainable. You ask how far can we go or where can we go. How much further can we take certification.

I do not think we are going to be able to take certification any further than what we have up to now. I think reasonably—once again, I think that your point is very well made. It is something that most people understand. There does not appear to be cohesion on the left. There is not any cohesion in the middle or on the right.

But I think that is exactly the purpose of dialog, to flush out common points and concerns. Where can there be some agreement, broad-based enough, that something can be built on? In the meantime, if you can somehow minimize the conflict, perhaps the humanitarian conditions that we are all so concerned about, both religious groups, liberals, conservatives and moderates, perhaps those conditions could legitimately be improved in that kind of an environment.

But to simply suggest or attempt to take the certification process further, I would think that we will be back here in 6 months. There will be discussions of the improvements of the type that Mr. Araujo has mentioned that will be improvements along the lines of what you have suggested. But the specific institutionalization of change, of improvement, will not be in any better situation or advancement in its progress than it is right now.

I do not think that tinkering with certification, is going to bring about a ceasefire or a more conclusive environment for human rights. I think you have no other alternative but utilize the influence of this country, as much as it has, to push for a reasonable discussion between the parties that are in conflict. And I think that that will be the position that many people will begin to take. And one of these days there just may be a major movement for a dialog.

Senator DODD. Thank you. And thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Dodd.

Just a few things that I think need to be clarified, and we do have a decision. We do not vote on certification, but the process will end unless we take affirmative action. The last certification now provided by law is, as we know, the middle of the year.

In the certification document the administration places much store in the Apaneca pact signed by four of the parties in the constituent assembly in August of 1982. They claim the pact represents a commitment to institutionalize human rights, to expand political participation, seek reconciliation with the opposition elements.

From your understanding of the Salvadoran political system, do you believe there is a credible commitment to these goals? Are they attainable anywhere in the near-term future?

Any of you that might be interested in that?

Mr. BALOYRA. Since I referred to that directly and so did Richard, the Apaneca is simply a framework. It is an arena. It is desiderata or simply a broad set of objectives with which everyone could agree.

Now, a problem comes when you start bumping into procedural matters and substantive matters and votes are taken, and you realize that then Professor Wiarda's astute observations come into play, because what democracy means for vast segments of the PCN, ADN,

and the Christian Democrats is not the same as what it means for ARENA.

Here I would like to bring up the question of culture and precedents. On at least five different occasions in this century there have been processes of transition initiated in El Salvador, and historically the right, the conservatives who do not believe in democracy have been able to detail such processes.

Latin Americans are historically conscious and Salvadorans are Latin Americans; so this group of people think that they can get away with it again. Not only that, but they would like to force and further polarize the situation, and force a choice between the guerrillas and ARENA.

Now, what we have to grapple with are the issues of whether we are contributing to the polarization of whether we are undercutting the feet of those obstructionists who, regardless of our ideas about fairness and openness, do not share those ideas and are simply taking advantage of a situation to obstruct the process.

Sooner or later we have to confront ARENA and in no uncertain terms signify that our good offices terminate the minute that they stop the whole process. May I use an analogy that I find very felicitous in this case, which is simply the analogy of a shaggy dog, and there was a cartoon that a colleague of mine included in his textbook on American politics. It is a shaggy dog, and there is a voice coming from the loin of the dog, and the voice says, "We larger fleas demand a bigger voice in the running of this dog."

And I do not think the United States nor any one of the Salvadoran actors by themselves can dictate the outcome, so therefore, the pro-consular role is antiquated by default. We cannot simply dictate what we want. It will not happen. But we can gently try as far as time permits—and I am not sure that time is on our side—gently prod the process to a peaceful resolution.

The CHAIRMAN. Dr. Wiarda.

MR. WIARDA. Senator, if I may just supplement my colleague's comments for a moment and respond directly to your question, I think what bothers me in much of the debate both today and in other discussions of American policy with regard to Latin America is that the terms of reference that we use—that is, both the human rights groups on the one hand and the administration in defending its position on the other—tend almost exclusively to derive from American categories and American political understandings.

If one looks at the slate of reform programs, for example, on which we in a policy sense have pinned our hat, they all strike me as being quite tenuous. One would like to believe in them, but one is never quite sure whether they are going to work out. And if you look at the principal reform—you have identified one clearly, having to do with military professionalization, the idea that we can really create in El Salvador an armed force, a professional military that is very much like our own, one has to raise serious doubts about that possibility.

Second, there is the question that you asked about the possibilities for the centrist political parties emerging and for the reorganization and growth of the center more generally. I must say that for a number of us who observe El Salvador, there are serious doubts about whether

in fact a center does exist or whether it can ever be organized or ever be institutionalized.

In response to Senator Dodd's query about the possibilities for a dialog, the fact of the matter is that in El Salvador the social gaps and the racial gaps and the political differences and the political violence and vendettas that go back for generations, in fact, in such a personalistic society, are not easily forgotten, and almost by themselves rule out the possibilities for that happy, centrist, broad middle and compromise on which we so often pin our hats.

And one looks at agrarian reform, which again has as its basic notion the idea that we will create a rural middle class, presumably a moderate and middle of the road peasantry out there in the countryside like the proverbial New England yeoman farmer or the Wisconsin family farm. Whether that has any viability in the El Salvadoran context I am not certain either.

So what we are left with is a series of hopes which have been put forth which I am willing, I think for a time at least, to continue to support. But to me those are rather fragile hopes. They may be hopes that will not be realized in any of those reform areas. But if, in fact, that does become the situation—that is, that the reform efforts, the centrist political parties and governments and so forth—do not emerge, do not strengthen themselves as implied in your question, then it seems to me the United States has to be prepared to reassess its policy.

I am not sure this moment and in terms of this certification process is the precise moment to do that, because it seems to me there are some grounds for hoping and for possibilities out there. There are some indications that the military in El Salvador does see the bigger picture a little bit at this stage. There are some hopeful signs in the agrarian reform. There are some signs that some of the centrist elements are reemerging and the Christian Democrats are reorganizing to some degree in the countryside. And as long as those hopeful signs are present, it seems to me that the U.S. policy ought to try to strengthen them and encourage them. Indeed one of the beneficial results of the certification process itself is that it does give us some leverage to try to pry some further efforts in this direction out of a frequently reluctant government and military.

But one ought to be prepared, it seems to me, that none of those prospects will work out, and if that is a fact, then the United States will have to reassess its options.

Mr. TORRES. Senator, if I may, very briefly.

The CHAIRMAN. Mr. Torres.

Mr. TORRES. As an Hispanic American born in the United States but of Mexican culture, I do not have the same expectations that some would have about the yeoman farmer or the family farmer in certain parts of the Midwest or the Northeast. I am very reasonable in my expectations about the change that could and perhaps one of these days may come about in El Salvador.

But I believe that the time to reassess the position of the United States is now, and I think that Congress must somehow identify its niche outside of the appropriations process or perhaps expand its impact and its influence in the appropriations process. It must reflect a serious concern for the type of change that most people have proposed, which is stable and institutional, but has not, under any circum-

stances reasonably, come about in the last year, despite our interest and the certification process. So I do not believe that the pact is something that is going to bring that about.

I believe the recommendation forwarded by the gentleman from South Carolina on the panel has merit. I think the President of El Salvador is an extremely concerned individual and should be in a position to have more control about the future of that country in selecting the military command.

The CHAIRMAN. Thank you.

Mr. Araujo, if you want to comment on that, fine, and then I would like to put one last question to you, and then we will keep the record open for other questions to you because we have to move along to our last panel.

But could you tell whether in your judgment if we reduce the aid and presence of the United States in El Salvador would this cause the dialog between the various parties—left and right and center—to—would it result in the dialog increasing, or would there be lesser of a tendency to have such a dialog?

Mr. ARAUJO. I believe there would be a lesser dialog. The possibilities of any type of dialog, any type of amnesty, any type of reassuring security or development, any further development of democracy could disappear.

I think the hope is with our involvement in the country, I think the hope is still there.

I wanted to answer just a couple of minutes on the plan of Apaneca, and I wanted to take two sections of it, the political commission and the human rights commission.

There is one area—you know, we have talked about the political parties, but we have not talked about a sector that has surfaced in El Salvador as part of the Salvadoran society, and I think we have some representatives today, and that is the campesino unions.

The campesino unions and the labor force is going to have to be considered into the political process of El Salvador as part of the Salvadoran society. We have to visualize their role in the new society.

Also, we have talked about the past. People that have taken place in El Salvador have played a role such as former President Duarte. We talk about Major D'Aubuisson. We have not come to a point, we have not been able to place judgment on the possibilities of the electoral process in El Salvador because we do not know the new faces that will come up.

There is a new political party that has been formed. I think there will be new faces in the running for control of power in El Salvador which should be considered. So there are several aspects in that that have to be taken into consideration.

Also, the plan of Apaneca, at least it is a working agenda for the provision of government. I think there was a major mistake made in the previous elections as though the candidates, they were presidential candidates instead of members of an assembly.

And I went to the human rights commission, and I spoke to the director of the human rights commission, Mr. Delgado, and he was very concerned about the understanding to Salvadorans of human rights, and unless there is progress in the judicial system, we certainly need

to know the settlements of what happened and bring justice to the perpetrators of the murders of the Americans.

But I think that Salvadorans are going to have to believe in human rights when they see justice brought for themselves and make a long, a viable, a judicial system that will bring justice to all. And we must not forget that Salvadorans are not the only foreigners who have been killed in El Salvador. There are Japanese and so on. There are hopes within the commission.

Now, he portrayed to me very seriously that he will resign from the commission if he does not get the support from the President and from the military forces to bring cases to trial.

Now, in the short time of 2 months they have already been able to solve some cases. They feel that if they were able to bring to justice the case of the murder of Archbishop Romero that this will bring some credibility to the Salvadoran people of the judicial system. We can require that justice be brought to Americans, but we must also make that system believable to the people themselves.

The CHAIRMAN. I want to thank you very much for your thoughtfulness in being here. We very much appreciate it. And I know that the members who were not able to be here this afternoon will want to read your testimony.

Mr. TORRES. Mr. Chairman, how long will the record be open?

The CHAIRMAN. How long would you reasonably want it to be open?

Mr. TORRES. Is it 5 days?

The CHAIRMAN. Five days will be perfectly all right.

Mr. TORRES. I just wanted to add one thing to the comment that Mr. Araujo made. We spoke to the human rights commission that was created as a result of the pact, and they indicated to us that they could not give us their statistics nor their results because they were concerned that the information might put in jeopardy the security of those they are trying to help.

Fear continues to exist even with those working in the process created by this transition government. These individuals are concerned about the security of their own lives with regard to the work that they are doing in the human rights arena. I just wanted to add that to the record.

The CHAIRMAN. Thank you very kindly.

Gentlemen, we thank you very much for being with us.

We will ask the third panel to come forward. Mr. William Doherty, American Institute for Free Labor Development, Washington, D.C.; Michael Posner, Lawyers Committee for International Human Rights; Stephen Kass, Esq., New York City Bar Association; and Leonard Weinglass, ACLU (southern California).

Mr. Weinglass, I understand you have a plane. Out of what airport is it, Dulles or National?

Mr. WEINGLASS. National.

The CHAIRMAN. What time must you leave?

Mr. WEINGLASS. I have to be there at 5:30.

The CHAIRMAN. You have to be there at 5:30? Well, with the concurrence of your colleagues on the panel—you have a 5:30 plane; you have waited all afternoon—why do we not go ahead with you? If Senator Dodd or I have questions, we can put one or two to you and submit the rest and excuse you as soon as you are finished with your testimony.

STATEMENT OF LEONARD WEINGLASS, ESQ., ACLU (OF SOUTHERN CALIFORNIA), LOS ANGELES, CALIF.

Mr. WEINGLASS. Thank you, Senator.

I want to thank the committee for allowing me to speak today and appear before the committee for the first time on the case of Michael David Kline. I am present before the committee this morning with his mother, Renate Kline, and his sister, Julie Kline.

Michael Kline is the last American to be killed in El Salvador. His death occurred on October 13, 1982. On December 10 through December 17, 1982 I accompanied the Kline family, together with Mark Rosenbaum for the ACLU, and we submitted a written report which I will submit to the committee, and David McClennon to El Salvador to determine the causes of Michael Kline's death.

Michael Kline's case, being the eighth case of an American killed within the last 3 years, is unique. In the first place, Michael Kline, a 21-year-old student from San Diego traveling through El Salvador—he had only been in the country 11½ days—he was on an international bus on his way to Costa Rica to visit friends, was stopped while a passenger on a bus and taken from the bus.

His case is different in that the persons who took him from the bus were regular army. He was sometime shortly thereafter shot and killed, shot and killed by a member of the regular army, a man who we know, Sergeant Lopez Garcia, who was assisted in the shooting of Michael Kline by Cristobal Garcia Garcia.

Not only do we know for a certainty that these soldiers executed Michael Kline. We know by virtue of a written sworn statement that they have given that they claim that Michael Kline was shot and killed after he left the bus and he attempted to flee after trying to grab a rifle from another armed military person.

They claim that Michael Kline was shot and killed at a distance that varies from 30 to 60 feet or to 30 yards. So we have the sworn statement of army military personnel, who I might say are still on duty, and I talked to them in person. However, that statement is flatly contradicted by an autopsy that was performed by one of the noted pathologists in El Salvador, Dr. Masferrer, who performed the autopsy on the body of Michael Kline at the request of the U.S. Embassy after Mrs. Kline insisted upon it.

That autopsy reveals that Michael Kline was not shot and killed at a distance of from 30 feet or 60 feet or 30 yards, but was shot and killed at a distance under 23 inches, and not while he was standing erect or running but while he was laying prone and face down.

The CHAIRMAN. While he was what?

Mr. WEINGLASS. Laying prone and face down. Dr. Masferrer in his office demonstrated to me the position the soldiers had to have taken at the time they killed Michael, straddling and standing over his body and shooting at virtually pointblank range into his back. Two shots in his back, both evidence gunpowder burns, indicating that the end of the muzzle of the gun could be no more than 23 inches from the back.

These facts became known to the U.S. Embassy. They were aware of the fact that Sgt. Lopez Garcia shot Michael. They were aware of

the fact that he had lied in a sworn statement. They were aware, of course, of the autopsy findings.

Despite that fact, nothing of a significant nature was done with respect to that investigation by the Embassy or, to our knowledge, by the Salvadoran authorities. Nobody on the bus was questioned, not the driver or the passengers. Nobody in the pickup truck who was a civilian person who was there at the time of the execution, because they claim he jumped out of a pickup truck, was questioned. No other witnesses were sought or questioned.

When we arrived in El Salvador Michael Kline's death remained an unsolved mystery. However, it was not a mystery to the extent that they knew who had killed him and that the killer had lied.

There was further circumstantial evidence of a rather unfortunate nature. Michael Kline's belongings were recovered. His wallet was entirely bare, not his California driver's license, not his passport, not a cent, not even a stub from the ticket for the bus on which he was riding. How this man was traveling through Central America bus by bus, country to country without a cent was never adequately explained. No money was recovered. No jewelry was recovered. There is clearly evidence of a possible robbery.

Beyond that we are now investigating this. Michael Kline's body bore a number of very suspicious marks. The pathologist in Los Angeles now is examining the body. His autopsy is not completed. The body has depleted somewhat over the passage of time, but we are attempting to ascertain whether or not Michael Kline was restrained and/or tortured or severely beaten. The preliminary indications are that he was at least restrained and quite possibly tortured. But we will have this report probably within 2 weeks, and I will be glad to submit it to the committee.

The CHAIRMAN. We will keep the record open to get those reports and have it immediately follow your very moving testimony.

What was the date of his assassination?

Mr. WEINGLASS. The date of his execution? October 13, 1982. It was in the time period of the last certification, and it is the most recent killing.

The CHAIRMAN. I would recommend that you be on your way to the airport if you must be there at 5:30. I will withhold any questions and submit them for the record.

My colleagues, any questions?

Senator PELL. No. Good luck to you, and we support you, and we believe in your attempts.

Mr. WEINGLASS. Thank you very much. May I submit the report?

The CHAIRMAN. Of course. That will be incorporated in the record at this point.

Thank you very kindly.

[The material referred to follows:]

THE MURDER OF MICHAEL KLINE IN EL SALVADOR

A PRELIMINARY REPORT

Michael David Kline, 21 years old and from San Diego, was murdered by Salvadoran soldiers in El Salvador on October 13, 1982. When shot and killed Michael had been two days in El Salvador, travelling on a public bus enroute to visit friends in Costa Rica. His body was struck by four bullets from an M-16

rifle—the two bullets which hit him first caused head wounds; the fatal shot or shots were fired next into his back at a distance no greater than two feet, most likely by soldiers who stood above Michael as he lay face down on the ground. There exists evidence that the young man was beaten and tortured before he was killed.

To date investigation by the Salvadoran and American governments into Michael's death has been bare. Three months now after the shooting Salvadoran investigators have themselves questioned neither the military personnel involved nor witnesses to what took place. Although the soldiers responsible for the killing are known, and their reports of events resulting in Michael's death thoroughly discredited, they remain uncharged and on active duty. Ambassador Deane Hinton has stated that the Salvadoran system of justice will fully control the investigation; he also candidly conceded to the Kline family and their representatives that that system "has broken down" and is one that "basically doesn't work."

What follows is a brief summary of what is known and what remains to be learned about the murder of Michael Kline in El Salvador. This report discusses Michael, his activities in Central America, the murder itself and what has been the response to the killing by Salvadoran and United States authorities. Much of the information presented was determined only as a consequence of a trip taken to El Salvador between December 11 and 16 by the mother and sister of Michael, Renate and Julie Kline, as accompanied by attorney Leonard Weinglass and ACLU of Southern California counsel Mark Rosenbaum, David Clennon and a translator.

1. BACKGROUND

Michael Kline was born in 1961, and grew up and attended elementary and junior high schools in San Diego. He moved with his mother and two sisters to West Germany in 1975 where he pursued interests in history and geography by reading and travelling widely. Michael became fluent in several languages, including Spanish, Italian, French and German.

In summer of 1981 Mike returned to the United States from Europe. He lived with his mother and sisters in San Diego. In September he went to Alaska and worked there driving a truck. He also studied and earned a high school equivalency diploma in March of 1982. Due to his high scores he was encouraged to continue higher education and was offered financial assistance. In April he went on a trip to Costa Rica and returned to Alaska in June where he worked in the fishing industry. In August he decided to return to Costa Rica one more time before he would start going to college.

Michael travelled to Mexico in August 1982, and remained there camping through most of September. On September 27, according to Guatemalan immigration records, he headed south into Guatemala. Twelve days later Michael mailed his mother his last postcard, telling her he was setting off to visit friends in Costa Rica. On October 11, again according to Guatemalan records, Michael displayed his passport to authorities, and crossed into El Salvador.

2. THE MURDER OF MICHAEL KLINE BY SALVADORAN MILITARY

Two days after entering El Salvador Michael was riding a public bus north and east from San Miguel toward the Honduran border. Salvadoran soldiers stopped the bus at a military checkpoint known as Kilometer 18, and removed all passengers for inspection and questioning. Michael was not permitted to reboard the bus. He was killed later that day by at least three of the soldiers stationed at the checkpoint—Sergeant Jose Destosorio Lopez Garcia, 23, Private Hector Urbin Reyes, and Private Cristobal Garcia Garcia, 18.

a. Salvadoran military reports of the killing

Who fired guns at Michael Kline has never been a mystery. Within days of the killing Salvadoran military personnel turned in reports of the shooting, and in fact publicized the incident as a significant episode in the war in El Salvador. Although these reports would subsequently be demonstrated to be false in their most critical details, what is meaningful is the extent to which they remained unchallenged by Salvadoran and United States authorities, and the failure of these authorities to undertake independent investigations past the reports themselves.

On October 14, Sergeant Lopez executed an affidavit purporting to set out the events resulting in Michael's death. His statement represented that a young man [Michael] was taken and kept off the bus because he "looked suspicious,"

carried no passport, identification papers or cash, and appeared unable to speak or understand Spanish. (The wallet found with Michael's belongings was missing all identification and money. Also missing were his passport, address book and journals. Nothing was left in the wallet but 500 dollars in travelers' checks.)

The affidavit continued that the soldiers moved their prisoner to a roadside army station a few hundred yards away and waited while Reyes secured a civilian vehicle to transport the group to garrison headquarters for interrogation. These headquarters were located in San Francisco Gotera, a provincial capital 104 miles northeast of San Salvador. A civilian pickup truck was stopped, and, according to the statement, the four men climbed into the rear of the truck.

Lopez wrote that when the group had driven about four miles the young man suddenly threw himself against one of the soldiers, and attempted to seize his automatic weapon. He said that this effort failed, and that thereupon the man jumped to the ground, fell, and then started running uphill toward a nearby woods. Lopez claimed that the soldiers shouted a warning, fired several shots in the air, and, when the young man did not halt, fired their guns at him. The affidavit reported that the man was hit three times from the rear—twice in the neck and once in the back—all at a distance estimated at 30 yards.

On the day after the affidavit was drafted, October 15, the Salvadoran Defense Minister in charge of the military's press office convened a press conference in San Salvador to announce the killing. Colonel Marco Aurelio Gonzalez charged that a "gringo mercenary" had been captured and shot after grabbing a soldier's weapon during an escape attempt. Gonzalez pointed to possessions found with Michael's body as evidence that the young man served as a mercenary: an air mattress, insect repellant, green pants, medicine and lubricating oil that "could be used for cleaning a weapon." It was later discovered that the medicine recovered was Alka Seltzer, and the oil referenced was Kiwi Neatsfoot oil used to clean hiking boots. According to press representatives attending the conference, Gonzalez was drunk throughout his presentation.

b. Salvadoran medical examinations of Michael's body

Michael's body was examined three times by Salvadoran doctors. The three medical reports resulting contradict each other in material ways; further, respected forensic pathologists in the United States have concluded that none of the reports satisfies accepted professional standards. The reports, for example, do not agree even as to the number of bullet wounds sustained by Michael; besides the wounds, they ignore all or virtually all exceptional physical markings photographed at the time of the examinations on Michael's body.

The most complete of the reports, and the only one produced by a licensed forensic pathologist, describes an autopsy performed on November 27, 1982—six weeks after Michael was killed. (The autopsy was conducted then only at the insistence of Mrs. Kline and against the recommendation of State Department officials in Washington.)

While the report itself is deficient, several of its findings are today unquestioned. They include:

Michael was struck by four bullets.

Two bullets produced head wounds; one struck Michael from the rear, the other may have been shot from the front.

One and perhaps two of the remaining shots caused Michael's death. They were very probably fired after the head wounds were sustained. These shots entered Michael's back and were shot from the rear.

Powder burns identified on Michael's back place the distance of firing of the shots there at no more than 60 centimeters, less than two feet.

c. Investigation of Michael's death by the Kline family and representatives in El Salvador

Because by the second week of December no investigation into Michael's killing was ongoing by either the Salvadoran or United States Governments, and because State Department officials in Washington refused to furnish Mrs. Kline or her counsel adequate information about the death (discussed below), Mrs. Kline, her daughter Julie, and counsel and friends travelled to El Salvador to best determine what had happened, and why the two governments were not acting expeditiously to learn the same. During their six days there the group met and spoke with Lopez and Cristobal, Commandante Zepeda (the Commander at Gotera on October 13), acting Archbishop Rivera y Damas, representatives of human rights groups associated with the Archdiocese, United States Embassy officials including

Ambassador Hinton, Dr. Roberto Masferrer (the doctor who conducted the autopsy), and other individuals with information concerning Michael's death.

(1) *Interview with Lopez Garcia and Cristobal Garcia Garcia.*—Counsel for the Kline family questioned Lopez and Cristobal at Salvadoran military headquarters in Gotera on December 15. Each of the soldiers essentially repeated the statements set forth in the Lopez affidavit. Lopez and Cristobal each stated why he believed Michael appeared suspicious—Lopez: "To me he was suspicious looking. He couldn't identify himself. . . . I asked him for his documents but he didn't have any, and he spoke to me in English and I don't understand English"; Cristobal: He looked suspicious because he had "long hair, dirty clothes" and was "carry a canvas backpack that contained a pair of olive-green pants and a mess kit." Both soldiers denied that they thought the young man removed from the bus was a mercenary. Both calculated the distance at which Michael was shot at between 20 and 30 yards.

Lopez and Cristobal were confronted with the medical conclusion that the fatal shot or shots were fired at close range. Neither would offer any explanation for this physical finding: Lopez did suggest that the examining doctor may have had "motives for lying."

Both soldiers were shown photographs of Michael's body taken shortly after his death and at the November 27 autopsy. These photos (described fully below) revealed several prominent physical markings on the body resembling abrasions, bruises and burns. Each soldier claimed that none of the marks was present on Michael's body when he was killed.

Lopez and Cristobal contradicted each other over some details of what took place on October 13. Lopez said that the soldiers fired while the pickup truck continued moving; Cristobal recalled that Lopez first ordered the driver to brake, and the soldiers then dropped to the ground before firing. The soldiers also differed whether individuals at the rear of the truck were standing or sitting when the incident began.

Shortly after arriving in San Salvador counsel for the Kline family were furnished a copy of a report broadcast the week of October 13 over Venceremos radio by guerrilla representatives. The report stated that a young man removed from a public bus and been shot to death by Salvadoran soldiers not far from Gotera. It stated further that a second person, a young woman, had also been taken off the bus, and then beaten, decapitated and buried.

Lopez and Cristobal both denied detaining any person besides a young man. Counsel, however, directed a series of questions to Cristobal inquiring regarding the description and activities of a young woman interrogated by Lopez while he stood with the young man. Cristobal's responses were that he was busy at the time, and was not paying attention.

(2) *Interview with Commandante Zepeda.*—Commander Zepeda was questioned by counsel at Salvadoran army headquarters in San Salvador on December 14. Zepeda said he initiated no inquiry concerning the October 13 killing after Lopez reported the incident to him: "I did not think much of the case, so many things like that happen." He said that Lopez stated that the soldiers had left the body where it had fallen, and that he accordingly ordered soldiers to recover and return it to headquarters. He stated that he could not recall the names of any men directed to this effort. (Lopez and Cristobal also remembered soldiers being sent to retrieve the body. They too claimed inability to name any of the men undertaking this task.)

Zepeda stated that usual practice required use of restraints on persons brought to headquarters for interrogation. He said that since soldiers were not equipped with handcuffs they would utilize whatever materials were available, including ropes and belts. When questioned, Lopez and Cristobal denied that restraints were placed on Michael.

(3) *Interview with Dr. Masferrer.*—Dr. Masferrer was questioned at his home in San Salvador on December 14. He said that he had received instructions to conduct the autopsy from United States Embassy officials—he was asked only to determine cause of death (not, for example, to ascertain whether Michael was beaten or tortured, or the position of the body at death).

Dr. Masferrer stated that the fatal shot or shots were most probably fired by person(s) standing above and near Michael as he lay face down on the ground.

Counsel showed the doctor the photographs of Michael's body taken shortly after his death and at the time of the autopsy. Dr. Masferrer acknowledged observing the following marks on the body revealed in the photos: a circular wire-like marking across the back and sides of the neck; markings resembling bruises

between the thumbs and forefingers; multiple abrasions across the upper arms and shoulders area; a broad and dark marking about the right forearm; and reddened fingertips. Masferrer's autopsy report only described the abrasions; he said he was asked no questions about any of the markings by Embassy personnel, George Lannon and Pat Butenis present at the autopsy.

Forensic pathologists in the United States who have examined the same photographs reviewed by Dr. Masferrer have stated that at least several of the markings appear to have been caused pre-mortem. Dr. Masferrer told counsel otherwise; he also said that he had never examined or seen a victim of torture in 35 years of practice in El Salvador.

(4) *Interviews with representatives of church and human rights groups.*—The photographs of Michael's body were also reviewed by representatives of Oficina de Tutela Legal del Arzobispado (Legal Aid Office of the Archbishop) and representatives of the Human Rights Commission of El Salvador (an independent, non-governmental agency). The photos were compared with a large sheaf of photographs of civilians beaten or tortured by the Salvadoran military over the past three years. Based upon these comparisons, and the representatives' familiarity with techniques of torture utilized in El Salvador, the groups and members concluded without qualification that Michael had been physically restrained, then severely beaten and tortured prior to death.

3. THE RESPONSES OF THE SALVADORAN AND UNITED STATES GOVERNMENTS TO THE MURDER OF MICHAEL

a. *Response of the Salvadoran Government*

The Salvadoran Government made no attempt to investigate Michael's death prior to December 14. The official position to that date (and remaining today) was that expressed by Colonel Gonzalez on October 15: Michael was a "gringo mercenary" killed after grabbing a gun and firing on soldiers transporting him to San Francisco Gotera for interrogation. No official had yet questioned Lopez, Reyes, or Cristobal about the October 13 shooting (no one, Salvadoran or American, ever knew Cristobal's full name until counsel questioned him on December 15); each remained (and remain) on active duty on Gotera.

On the morning of December 14 counsel requested of Ambassador Hinton transportation to Gotera to enable them to question the three soldiers and other percipient witnesses. The request was denied—the reason given was lack of Embassy funds—and counsel indicated that they would make private arrangements to reach the military base. Later that afternoon an Embassy official informed counsel that the Salvadorans were now beginning their investigation: an investigator was being sent to Gotera, and counsel were invited to accompany him. During the next day's questioning of Lopez and Cristobal the Salvadoran investigator sat silently. (The other witnesses sought by counsel—e.g. Reyes, the pick-up truck driver, and the examining doctor at Gotera—were not made available.)

Just prior to departing El Salvador, counsel were assured by Embassy officials that information would be forthcoming reporting all progress made by the Salvadoran investigation. No such communications have since been received.

b. *Response of the United States Government*

The American Consulate in Hamburg West Germany provided Mrs. Kline at her home there on October 21 with the first information concerning her son's death. The Consulate reported that a young man had been killed by Salvadoran soldiers on October 13; it stated that the man was found with no identification papers, but with 500 dollars in travelers' checks in the name of Michael Kline. On November 1, from dental records supplied by Mrs. Kline, the Consulate told her that it was "most probable" that the young man shot by Salvadoran soldiers was her son.

Beginning at once on October 21, and continuing thereafter through the present—Mrs. Kline sought from United States officials all available information about the October 13 shooting. Little information was furnished: the following State Department cable between San Salvador and Washington, dated November 3, is instructive as to official attitude and conduct:

"CONOFF wishes to reiterate most strongly that Mrs. Kline is not yet extremely bitter. Post would say however that if she begins to feel that we are less than forthcoming she will become very bitter, resulting in unwanted publicity

and problems. Ref. B arrived without guidance for Post. However long must we withhold this information from the mother? Mrs. Kline is to put it simply a mother who has lost her son in a land far away. We must remember that fact in our dealings with her. If she is not given convincing reasons not to she will go to Salvador."

On several occasions State Department officials in Washington and Hamburg actively sought to dissuade Mrs. Kline from traveling to El Salvador to find out what happened to her son. The Consulate in Hamburg told her that a trip would be futile, explaining falsely: "You would not want to remember him the way he looks. He has already been buried. . . ." Similarly, State Department personnel in Washington stated to Mrs. Kline on December 1: "If you go to El Salvador you will only sit around and spend useless time," and on December 29: "You cannot get help from the American Embassy. No, none whatever. [If you travel to El Salvador,] [y]ou will have to do it on your own."

Between October 29 and November 18, Department personnel daily pressed Mrs. Kline for funds to cause her son's burial in El Salvador. Attempts were made to discourage her from requesting an autopsy. Officials misinformed her that a government investigation into Michael's death was taking place. Assurances were given that pertinent documents like medical reports and the Lopez affidavit would be sent to her; when none were received and Mrs. Kline made inquiry, the assurances were retracted.

Counsel for Mrs. Kline were treated in the same manner. One State Department officer, when asked if an investigation was going forward, replied that she could not answer the question because she did not "know what [v.as] mean[t] by the word 'investigation'." Counsel sought by a formal, expedited Freedom of Information request to obtain documents concerning the death of Michael prior to or during the December 11 trip to El Salvador: he was told by a State Department official that the documents were available, but such requests "take up to a year to process." Eventually, copies of some of the documents requested were turned over to Mrs. Kline in San Salvador.

While early contact between Mrs. Kline and the State Department was occurring, United States personnel in San Salvador did officially release a statement refuting Colonel Gonzalez' characterization of Michael as a "mercenary"—labelling the description "absurd." But, at the same time, an Embassy spokesman was officially and widely quoted in numerous press reports as calling Michael Kline "a drifter," though no effort had been made by any government official to learn from Mrs. Kline background information about Michael, or reasons for his travelling in Central America.

When Mrs. Kline arrived in San Salvador, American officials sought to assure her and her counsel that inquiry into Michael's death would be properly handled by the Salvadoran military. As the following discussion of December 13 between the counsel and George Lannon, Chief, Consular Section at the American Embassy in San Salvador demonstrates, officials could not provide a sound basis for their claims.

COUNSEL. Have you gotten anything correct [from the Salvadoran military] on this case. I mean, except that a man was killed.

LANNON. We haven't gotten that much information from the Salvadoran military authorities.

COUNSEL. Yes. But what you've gotten—have you gotten any correct information besides the fact that a man was killed on a certain day.

LANNON. I'd say probably not now, based on the—all we've got from the Salvadoran military this far is the affidavit.

COUNSEL. There's nothing correct in that affidavit except that a man was killed on a particular day. Isn't that right?

LANNON. Yes.

COUNSEL. . . . [What would make you think you would get any correct information [from] the military?]

LANNON. I would hope we would.

On December 12, Lannon was asked whether he believed the military would obtain the truth concerning what happened to Michael. He replied: "This place is like quicksand; it's hard to say." Counsel asked another Consular official, Pat Butenis, the same question. She answered: "No comment."

Unlike the case of the seven other Americans killed in El Salvador, this case has never involved questions of who fired the guns that caused Michael Kline's

death. What has not been known are the circumstances that resulted in the killing. Whether Michael was beaten and tortured, and whether anyone else was murdered with Michael.

Answers to these questions are not beyond reach. The soldiers who killed Michael and principal percipient witnesses are either known or knowable: in addition to Lopez, Reyes and Cristobal, they include the bus driver, the driver of the pick-up truck (his identity is known to Embassy officials), the doctor who examined Michael's body at Gotera, and the soldiers who retrieved Michael's body. Guatemalan immigration exit data could be checked to determine whether Michael was accompanied by anyone when he left Guatemala on October 11.

Counsel for the Kline family have requested of Ambassador Hinton and other Embassy officials that the appropriate interviews be conducted and the appropriate information searches made. To date—three months after Michael was killed—no interview has been conducted by a Salvadoran military officer, nor has either the Salvadoran or American government meaningfully begun any investigation.

On December 12, George Lannon was asked why no one had located the pick-up truck driver although his name and address were known; why no one had inquired to determine the name of the bus driver stopped on October 13; why, at the time, no one had even attempted to obtain Cristobal's full name. Lannon replied to each question that no one had thought to make any such inquiries.

Two days later, on December 14, Ambassador Hinton refused counsel's request for FBI investigative assistance, and asked Mrs. Kline for patience and confidence in the Salvadoran system of justice to investigate properly her son's death. In the same discussion Hinton described that system as a "major source of frustration to us," as "broken down," and as a system that "basically does not work."

4. RECOMMENDATIONS

The following recommendations are made in order to determine now how and why Michael Kline was murdered.

The State Department should disclose immediately to Mrs. Kline all documents presently withheld concerning her son's death. Documents regarding any ongoing investigation should be continuously furnished by the Department to Mrs. Kline.

The State Department should facilitate immediately a meaningful investigation into Michael's death. Assistance from the FBI under the superintendence of an appropriate congressional subcommittee should be directed and all appropriate law enforcement techniques should be utilized. With the aid of Mrs. Kline and counsel, the persons identified on page 18 of the report should be questioned. The State Department should secure at once the Guatemalan exit data described at page 18.

Congress should hear testimony as part of its pending certification hearings concerning the known circumstances of Michael's murder, and the response to the murder to date of the Salvadoran and United States Governments.

ROBERT BUCKLIN, M.D., J.D.,
Los Angeles, Calif., February 2, 1983.

Re Michael Kline, deceased.

MARK ROSENBAUM,
Attorney at Law,
Los Angeles, Calif.

DEAR MR. ROSENBAUM: On January 16, 1983, I was contacted by Mr. Blaise Bonpane, Mr. Leonard Weinglass and yourself, with the request that I examine the body of an American male, said to be that of Michael Kline, with the intent of determining, if possible, if that individual had been injured or tortured prior to his death from gunshot wounds in El Salvador during the month of October 1982. I was also requested to attempt to make a positive identification of the body, based on dental records. I later spoke with Mr. David Clennon, who provided me with an autopsy report on Michael Kline, performed in San Salvador in November 1982, as well as a number of photos taken at that time, a single skull X-ray, said to have been taken in Germany was provided for me, along with a set of dental impressions of both jaws of Michael Kline. I asked that a written permit for my examination be obtained from Renate M. Kline, the mother of the deceased. This was done, and during the early evening of January 18, 1983, I examined the body of the deceased at the Malinow-Silverman Funeral Home, 850 Venice Boulevard, Los Angeles. Mr. Clennon was present

during that examination. A copy of my description is enclosed, together with a set of photos which I took during my examination.

The condition of the body at the time that I saw it was not conducive to a satisfactory interpretive study of the injuries. The skin was dry and parchment-like and there was much discoloration and tissue change that had resulted from the long interval between death and the time of my examination. There were a number of areas on the body that superficially looked like injuries of ante-mortem duration, in the form of bruises and abrasions. Comparison of these with lesions seen on the photos supplied by Mr. Clennon was done, and several tissue samples were removed from the following sites: left chest, right chest, back, forehead, right cheek, neck, left shoulder, left palm, left thumb, right thumb, right forearm, right foot and left ankle. Each of these tissue samples was processed and microscopic slides prepared and examined.

In order, to make an identification of the body, the upper and lower jaws were removed and a set of dental X-rays was prepared. An X-ray of the jaw was prepared, in the same plane as that of the film provided for me.

On the basis of my examination and studies, I have reached the following conclusions:

1. The body that I examined is that of Michael Kline. The dental comparison between the films that I prepared and those provided to me, is identical.

2. The photos provided by Mr. Clennon show a number of antemortem abrasions and bruises, the most significant of which are on the left chest, the face and forehead, the left forearm and the neck. The lesion on the left chest is the only one that shows presence of red blood cells on microscopic study. All the other lesions, even though they grossly resembled bruises, failed to show identifiable red blood cells presumably because of postmortem changes that had resulted in any cells that might have been there having been destroyed by the passage of time.

3. I gave special attention to the possibility of there having been application of electrical energy to the skin, and I was unable to detect any of the criteria of electrical burns.

4. I considered the possibility of application of mineral acid to the skin, especially on the face, but I was unable to detect any specific changes due to acid.

5. The encircling lesion on the neck was removed completely and sectioned. It showed only relatively superficial indentation, and careful study of the larynx and other neck organs failed to show any sign of strangulation.

6. The area on the right lower back, considered to be a gunshot wound, had been previously cut into and I was unable to trace a gunshot track into the tissue at this point. The stippling appears on the microscopic sections and is not inconsistent with gunshot residue.

7. I did not and do not question the cause of death having been the result of gunshot wounds to the back and head. I concur with the El Salvador pathologist in his interpretation of the closeness of the gun to the skin at the time the wound in the right lower back was received. The other wounds do not show characteristic distance features.

8. There are a great many areas of the skin which clearly represent post-mortem changes from drying. Also, there are some insect bites on the lower abdomen.

9. I am of the opinion that Michael Kline suffered injuries to his body from blunt force, resulting in abrasions and bruises about the chest, face and extremities, and that these occurred before his death from gun shot wounds. I am unable to state whether or not these antemortem injuries were the result of an attempt at torture.

Should you have any questions about this report, please let me know.

Sincerely,

ROBERT BUCKLIN, M.D., J.D.

ROBERT BUCKLIN, M.D., J.D.,
Los Angeles, Calif.

Re Kline, Michael.

POSTMORTEM EXAMINATION

The examination is performed at the Malinow-Silverman Funeral Home, 850 Venice Boulevard, Los Angeles, California, beginning at 5:30 p.m. on January 18, 1983.

The embalmed body is that of an adult Caucasian male measuring 73 inches from crown-to-heel, and appearing to be in his early twenties. Artifacts are

present in the form of a Y-shaped thoraco-abdominal incision and two incisions on either thigh on the medial aspect. The scalp hair is brown and measures up to 5 inches in length. The eyes are apparently absent and cotton pledgets are present in the orbits. On the forehead, is a slightly irregular abraded area with irregular, slightly elevated, gray margins. The lesion measures $5 \times 1\frac{1}{2}$ inches and extends over the frontal bones. Evidence of slippage of the calvarium from autopsy incision is noted at the periphery of this area. The lesion shows denuding of surface skin with slight peeling of the peripheral edges. The nose is thin and aquiline. The lips are dry and the teeth protrude through the open mouth. A short growth of hair, light brown in color, is present on the upper lip and there is a short growth of hair on the chin. There is a blunt laceration 1 inch in length under the right chin area. The ears show drying of the skin surfaces. The skin of the face, particularly on the left, shows a dark red-brown discoloration which is irregular in outline and covers much of the supraorbital, infraorbital and the malar area, as well as the nose.

A similar change, but to a lesser degree, is present on the right. In the left infra-auditory area is a $\frac{3}{4} \times \frac{1}{4}$ inch abraded area which may represent a gun shot track. In the occipital portion, slightly to the left of the midline is a $1\frac{1}{2} \times \frac{1}{4}$ inch depressed area which has resemblance to a gun shot track. Visible on the lateral aspect of the right and left sides of the neck is a fine compression band which will be measured and described from the posterior surfaces. On the left upper chest at the junction of the clavicle and sternum is an irregular $1\frac{1}{2} \times 1$ inch area resembling a gun shot track. There are multiple contused areas over the shoulders, the largest on the right measuring 3 inches in diameter. On the left pectoral chest is a $7 \times 4\frac{1}{2}$ inch serpiginous zone which has a medial defect in which some plastic suture-type material is present. Around the periphery of this lesion there is elevations of skin margins and some pale crusting is noted. There are a few small abraded areas over the iliac crest, most prominent on the left. The penis is circumcised. The scrotum is dissected and the left testis is identified. The right testis is not seen. No injury is noted to the tissues of the foreskin or corona of the penis. The lower extremities show abraded zones over the calves and tibia with the largest on the left measuring $\frac{3}{4}$ inch in diameter. On the anterior surface of both feet and ankles are irregular serpiginous zones of abrasion ranging up to $1 \times 1\frac{1}{4}$ inches. The skin edges here are elevated and slightly rolled.

The toes of the left foot are dry and there are small abrasions at the base of the toes, particularly the third toe. The toes of the right foot are also dry. The soles of the feet are thick and calloused. On the posterior left ankle area is a $2 \times 1\frac{1}{2}$ inch abrasion with denuding of skin surfaces and proliferation of skin edges. On the left upper extremity is an irregular area of gray-brown discoloration measuring 7×3 inches, below the shoulder. A smaller zone is present on the lateral left elbow measuring 3×1 inch. The fingers of the left hand are dry and dehydrated. The fingernails are retracted and are shorter than the finger length. The fingers do not show any external evidence of injury. There is some blue pigment-type material which may represent fingerprint ink. Around the right forearm is a band-like zone of abrasion measuring $1\frac{1}{4}$ inches in width and extending completely around the anterior surface and incompletely the posterior surface of the wrist. Below it, close to the base of the right thumb, is a $2 \times \frac{3}{4}$ inch abraded area. Several smaller irregular abrasions are noted on the right forearm and there are large abrasions and superficial contused zones involving the right arm and shoulder.

Examination of the back shows bullet track located $14\frac{1}{2}$ inches below the plane in the crown and 3 inches to the right of the midline. The skin around this wound is smooth and no distinct stippling is identified. In the right lower back is a zone of irregular gray pigmentation measuring $4 \times 3\frac{1}{2}$ inches. There are five postmortem type incisions into this area. No bullet track is identified at this time and the track, if any, may have been removed in one of the incised areas described above. There is denuding of skin surfaces around the perineal area and involving both buttocks. A fine irregular zone of scarring is noted over the sacrum. The posterior portions of both legs are essentially not remarkable. The right ankle shows a zone of irregular abrasion with skin denuding and elevated edges similar to that described in relation to the left posterior ankle. Encircling the neck, primarily on the posterior and lateral portions, is an 11 inch shallow furrow measuring less than one-eighth of an inch in width. It does not extend over the anterior surface of the neck and no hemorrhage is noted in the surfaces.

The remainder of the examination consists of removal of the upper and lower jaws for identification purposes and removal of the larynx. It is noted that a

portion of the lower part of larynx has been previously removed. Multiple specimens are taken from areas of cutaneous injury including those on the chest, extremities, feet and back. The stippled area on the right lower back is incised in toto. No injury is noted to the deeper structures of the neck.

ROBERT BUCKLIN, M.D., J.D.

The CHAIRMAN. And now Mr. William Doherty, the American Institute of Free Labor Development.

Mr. Doherty, it is a pleasure to have you before us.

**STATEMENT OF WILLIAM C. DOHERTY, JR., EXECUTIVE DIRECTOR,
AMERICAN INSTITUTE FOR FREE LABOR DEVELOPMENT, WASHINGTON, D.C.**

Mr. DOHERTY. Thank you. It is a pleasure to be here, although I think you will find I am taking a different position than we had at the time of the last two certification hearings.

I am accompanied by Sister Jane O'Grady, a legislative representative of the AFL-CIO, and indeed am also honored by the presence of the representatives of more than 500,000 workers and campesinos from El Salvador. The leaders of the Unidad Popular Democratica are with us here in the persons of Francisco Zaldaña of the fesin-constrans; Samuel Maldonado, of the UCS; Euladio Lopez Barahona, of the CTS; and Jorge Camacho, of the ACOPAI.

I might add that these are the people directly responsible and involved in the land reform process. We had the great pleasure of having Senator Dodd visit them not too long ago on the scene, as well as some other Members of Congress. They will be available at the kind invitation, Mr. Chairman, of members of your staff for discussion with other members of this committee and the committee staff at 3:30 on Friday in this room. Since they are the people that are the most directly involved in land reform, they would be more than willing to give you their views on that. And there is important information in our testimony with regard to land reform.

I would suggest that the staff people that are particularly interested should come on Friday and pose their questions directly to the campesino leaders.

I would like to read, because we consider it so important, certain segments of my testimony. I think I can do that within the timeframe allotted.

We know that until justice is available to all Salvadorans, true peace and democracy cannot prevail in that country, and our Salvadoran brothers and sisters will be condemned to live in an unjust society. We are concerned that justice be obtained for all American victims of Salvadoran violence, including particularly the case of the Catholic nuns and the lay worker, and of course, Mr. Kline, just coming to our attention, and our own representatives, Michael Hammer and Mark Pearlman. With this in mind, the AFL-CIO urges a suspension of all military aid to El Salvador until such time as justice is obtained in these murder cases.

The reason we are urging that now is because between now and the last time we were involved in the certification process, we have identified the officers in the military, a captain and a lieutenant, who were directly responsible for the murder of our people, and those of-

ficers have not been brought to justice. And frankly, the certification procedure requires that not only are the perpetrators of human rights violations to be brought to justice, but particularly military officers are supposed to be not only admonished but brought to justice.

We therefore feel that the conditions for the certification now clearly fail.

Repeatedly in the Sheraton case the judge refused to allow evidence and testimony damaging to the interests of Capt. Edurado Avila, Lt. Rodolfo Lopez Sibrian and Hans Christ to be a part of the court record. Captain Avila is a member of one of the richest and most powerful families in El Salvador and is the nephew of Dr. Ricardo Avila Morera, a justice of the Supreme Court. He, as well as Lopez Sibrian, are close associates of Roberto D'Aubuisson, current president of the constituent assembly.

Both Avila and Lopez Sibrian were with D'Aubuisson when he was arrested in the May 1980 aborted coup attempt. Christ's name was found among the documents taken from D'Aubuisson at the time. Hans Christ, married into a land-owning Salvadoran family, has close contacts with certain elements in the military forces and will be a loser of his land, by inheritance, because of the land reform program. After learning of the murder accusations, D'Aubuisson called the accused officers in public "my colleagues and my friends." He continued, "I am honored to be their friend. I know they are good soldiers."

Not included into the court records was a statement by Avila that Lopez Sibrian had asked him for a loan of his 9mm Ingram submachine gun and that the loan was made in the hotel parking lot. Not included in the record was the testimony by Captain Avila that Lopez Sibrian later returned the weapon to him and that he subsequently threw it into the Bay of Fonseca. Not included into the record was the testimony by Avila that upon seeing Viera in the hotel dining room, Christ had said, "Look at the son-of-a-bitch! He has let his beard grow. He should be dead." Avila had fled the country before his testimony could be ratified.

The most publicized absurdity of the judge was the dismissal of Lopez Sibrian for "insufficient evidence" despite the fact that he knew that Lopez Sibrian had changed his appearance prior to appearing in a lineup by shaving his moustache and dying his hair from red—quite a distinguished mark in El Salvador—to black. The judge's only reply, when questioned on this act, was that it was not against the law to dye one's hair and shave one's moustache. At this point, even our own Ambassador, Deane Hinton, declared that he was "dismayed and incredulous."

Because of these events, the AIFLD and AFL-CIO has made public in October most of the information which we have on the case, but not all for reasons of security, and we have insisted that several things be done. First, we call for a new warrant for the arrest of Hans Christ to be issued and a renewal of the extradition request by the Salvadoran Ministry of Foreign Relations. They did not want to do this.

Second, we want a serious, and public, effort to be mounted to locate and bring Avila back to El Salvador. This they have not done. And third, we want Lopez Sibrian to be court martialed and held for an appropriate system of justice. None of these things have been done.

We will not be satisfied with the prosecution under way. The prosecution of two corporals—by the way, privates at the time they killed our men and promoted afterwards presumably for their good work—will not satisfy us. They were ordered by Avila, Lopez Sibrian, and Christ to carry out the murder of our brothers.

Now, the whole system of justice, or lack thereof, in El Salvador is the problem. The certification of human rights is fruitless if known perpetrators of human rights violations of the people of El Salvador cannot be prosecuted under an acceptable international system of justice. So all the body counts that this administration gives—and are questioned by many of the well-meaning Senators and Members of the House—and all the other reports of violations, are meaningless if there is no system of justice. And in El Salvador there is no system of justice in these matters.

And we are now asking that interested Senators, in consort with interested Members of the House, try to change and extend the certification procedure, because we think it is essential that a congressional oversight take place every 6 months to bring pressure on the legal system in El Salvador to change according to internationally accepted standards. We ask for a change in the certification procedure to include in the first requirement of the procedure this language: "that El Salvador is making a concerted and significant effort to comply with internationally recognized human rights . . ." and adding this new language, "and to that end has taken concrete steps to restructure and reform their judicial system and to remove from it corruption and political control and influence." Because very frankly, we think all of the discussion of human rights is specious if indeed there is no system of justice that will effect the prosecution and conviction of those who persecute their fellow human beings in El Salvador, and who engage themselves in out-and-out executions and assassinations, as has happened with all of these American citizens.

I might add that the administration in its certification on page 7—and I will not quote it because it is rather extensive—themselves recognize the weakness of the system of justice in the country. And I have quoted liberally in my testimony from Ambassador Deane Hinton's observations as to the Mafia that exists in El Salvador and the fact that there is a very weak system of justice.

I would also like to add that in my testimony there is a statement translated from the original Spanish prepared by the 500,000 members of the Unidad Popular Democratica that also calls for a reassessment and a rewriting of the system of justice and the role of the Supreme Court of their country as part of the political reformation that is now taking place in that country.

I would just close by saying that we would appreciate whatever support that we can get from you, Mr. Chairman, Senator Dodd, and your other colleagues to try to rearrange the certification process so that we can try to help the Salvadoran people achieve their goal, their ultimate goal of establishing a legitimate system of justice in order to eliminate future human rights violations.

Thank you, Mr. Chairman.

[Mr. Doherty's prepared statement follows:]



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STATEMENT OF WILLIAM C. DOHERTY, JR., EXECUTIVE DIRECTOR AMERICAN INSTITUTE FOR FREE LABOR DEVELOPMENT BEFORE THE FOREIGN RELATIONS COMMITTEE OF THE UNITED STATES SENATE FEBRUARY 2, 1983 WASHINGTON, D.C.

Mr. Chairman, let me first thank you once again for the high honor of being asked by this distinguished Committee to give testimony on behalf of the AFL-CIO on conditions in El Salvador. With me is Sister Jane O'Grady, a Legislative Representative of the AFL-CIO.

As recent as January 25, 1983, AFL-CIO President Lane Kirkland addressed a defense strategy forum of the National Strategy Information Center, and I would like to take this opportunity to quote several paragraphs from that important speech which are pertinent to our presentation today. He said:

"We do not ask which rogue is in power in a given country, but to what degree the people of that country are free to organize their own institutions.

We believe that our government should apply such a measure and such a standard embodied already in international covenants and conventions. No nation that has acknowledged those instruments can colorably claim that political or economic action in response to its brazen and constant violation constitutes interference in 'internal affairs'.

From this follows that we should not be passive observers of forces struggling to establish democratic institutions—and then merely react to their success or failure by lifting or imposing sanctions on their governments. We should actively assist those forces to the limits of our capability and their wishes.

The AFL-CIO is not against sanctions. We called for more stringent sanctions against the Soviet bloc for its repression of Solidarnosc than this Administration was willing to impose.

But the AFL-CIO urged these sanctions after having amply demonstrated in the previous year, its political, moral and material support for Solidarnosc.

The same has been true in El Salvador, whose trade union movement we have assisted and encouraged for two decades. Our attitude toward U.S. military and economic assistance to El Salvador has been determined less by our feelings about the character of the regime than by whether, in the view of our Salvadoran brothers and sisters, such aid enhances or diminishes the prospects for trade union rights and land reform."

We know that until justice is available to all Salvadorans, true peace and democracy cannot prevail in that country, and our Salvadoran brothers and sisters will be condemned to live in an unjust society. We are concerned that justice be obtained for all American victims of Salvadoran violence, including particularly the case of the Catholic nuns and the lay worker and our own representatives, Michael Hammer and Mark Pearlman. With this in mind, the AFL-CIO urges a suspension of all military aid to El Salvador until such time as justice is obtained in these murder cases.

The situation in that beleaguered country is different in several significant aspects than when the AFL-CIO last gave testimony on August 3, 1982. In August, it was our pleasure to report to you that progress was being made. Today it is our sad duty to state that the judicial system of El Salvador is failing to satisfy the minimal requirements of justice in the Sheraton Hotel murder case.

HUMAN RIGHTS - Salvadoran Judicial System

We are certain that every member of this Committee knows that the AFL-CIO has had a long-standing policy that we would not be supportive of the certification of improvement in the human rights field unless there were continued progress in the investigation and prosecution of the murderers of Michael Hammer and Mark Pearlman, of the American Institute for Free Labor Development (AIFLD/AFL-CIO)

and of José Rodolfo Viera, the former General Secretary of the Unión Comunal Salvadoreña (UCS) and also president of the Instituto Salvadoreño de Transformación Agraria (ISTA) or Land Transformation Institute.

We do, of course, seek to bring to justice those who so brutally murdered Michael Hammer, Mark Pearlman and José Rodolfo Viera. The issue of justice in El Salvador, however, is of much broader importance than the solution of one crime inflicted on two Americans and one Salvadoran - three persons among the many thousands who have been the innocent victims of politically motivated execution. Without a judicial system that truly functions to achieve justice for all members of a society, there can be no true democracy or respect for human rights - the cause for which Hammer, Pearlman and Viera sacrificed their lives. Thus, in seeking justice in the Sheraton case, we are seeking for all Salvadoran citizens the right to live under a rule of equally applied law. Only by opposing the certification of human rights progress, with the clear possibility that military aid to El Salvador will subsequently be suspended, will there be provided an incentive to the Salvadoran authorities to correct the abuses and corruption of their court system.

Since August 1982, when the Special Investigating Committee appointed by President Magaña embarked upon its work, that corruption has been manifested in various ways. The Committee's work resulted in a recommendation that the two privates (later promoted to corporals, we suppose for their valiant efforts on the night of Jan. 3rd, 1981) who pulled the trigger, and the two officers and a businessman who planned and helped in the execution of the murders, be investigated in connection with the crime. The two officers were Lt. Rodolfo Isidro Lopez Sibrian and Capt. Eduardo Ernesto Alfonso Avila, and the businessman was Hans Achim Christ Hoope.

Under Salvadoran law, the judge assigned to the case was not at this juncture required to do more than to ratify the accumulated testimony and to determine which evidence would later be presented to a jury whose majority decision

would determine innocence or guilt. The jurors never see a witness or hear a cross examination as would be customary in a trial in the United States. Rather, the court records are read to the jury and these records include only the testimony and evidence which the judge himself has allowed to be a part of the records. Subsequently, both the equivalent of a prosecuting attorney and a defense attorney are allowed a limited time for summation of the case to the jury - although they may only discuss the evidence which the judge has admitted into the court record. The judge in El Salvador, therefore, is in a key position because he can determine what is ultimately presented to the jurors.

An intelligent, honest judge, trained in the subtleties of the law, may serve the cause of justice by the careful admission of evidence into the court records. On the other hand, if the a system falls under the control of a vicious oligarchy, as we claim it has, this power of the judge to admit or deny evidence into the court records becomes one more tool of control for the privileged interests of the country against the people.

Repeatedly, in the Sheraton case, the judge refused to allow evidence and testimony damaging to the interests of Avila, Lopez Sibrian and Christ to be a part of the court record. Avila is a member of one of the richest and most powerful families of El Salvador and is the nephew of Dr. Ricardo Avila Morera, a Justice of the Supreme Court. He, as well as Lopez Sibrian, are close associates of Roberto D'Aubuisson, current President of the Constituent Assembly. Both Avila and Lopez Sibrian were with D'Aubuisson when he was arrested in the May 1980 aborted coup attempt. Christ's name was found among the documents taken from D'Aubuisson at the time. Hans Christ, married into a land owning Salvadoran family, has close contacts with certain elements in the military forces and will be a loser of his land (by inheritance) because of the land reform program. After learning of the murder

accusations, D'Aubuisson called the accused officers "my colleagues and my friends". He continued: "I am honored to be their friend. I know they are good soldiers."

Not included into the court records was a statement by Avila that Lopez Sibrian had asked him for a loan of his 9mm Ingram submachine gun and that the loan was made in the hotel parking lot. Not included in the record was the testimony by Avila that Lopez Sibrian later returned the weapon to him and that he subsequently threw it into the Bay of Fonseca. Not included into the record was the testimony by Avila that upon seeing Viera in the hotel dining room, Christ had said: "Look at the son-of-a-bitch! He has let his beard grow. He should be dead." Avila had fled the country before his testimony could be ratified.

The most publicized absurdity of the judge was the dismissal of Lopez Sibrian for "insufficient evidence" despite the fact that he knew that Lopez Sibrian had changed his appearance prior to appearing in a lineup by shaving his moustache and dying his hair from red (quite a distinguished mark in El Salvador) to black. The judge's only reply, when questioned on this act, was that it was not against the law to dye one's hair and shave one's moustache. At this point, our own Ambassador, Deane Hinton, declared that he was "dismayed and incredulous".

Because of these events, the AIFLD has made public in October most of the information which we have on the case (but not all, for reasons of security), and we have insisted that several things be done. First, we call for a new warrant for the arrest of Hans Christ to be issued and a renewal of the extradition request by the Salvadoran Ministry of Foreign Relations. Second, we want a serious (and public) effort to be mounted to locate and bring Avila back to El Salvador. And third, we want Lopez Sibrian to be courtmartialed and held for an appropriate system of justice. None of these things have been done. We will not be satisfied with the prosecution of two triggermen.

The evidence recorded by the Special Investigating Commission (but not all ratified by the judge) is overwhelming in the case against Christ, Avila, and Lopez Sibrian.

Nevertheless, the only two defendants currently being considered for trial are the two privates -now corporals. It is anticipated that their defense, being conducted by the attorneys for Christ, Avila and Lopez Sibrian, will likely be that they, the confessed triggermen, were acting under superior orders - but the persons who issued those orders will not be on trial. We must stress here that the case against Christ, Avila and Lopez Sibrian does not rest on the testimony of the privates and of one waitress as is often alleged, but rather on the testimony of more than a dozen corroborating witnesses. Many others, not yet identified as witnesses, can be made available when and if the case progresses.

Other possibilities for continuance of the case are being explored. One is indictment under Decree 507, the State of Siege decree, which states that anyone who murders an official of the Salvadoran government (Viera was also the head of the Salvadoran government agency ISTA, or Land Transformation Institute) can be tried before a military tribunal.

Meanwhile, it has been suggested by the U.S. Embassy in El Salvador that we hire an "acusador particular" - an attorney with roughly the same duties and responsibilities and rights as a state-provided prosecuting attorney. The cost of hiring an "acusador particular" who is brave enough, intelligent enough, and with sufficient experience to handle the case, is estimated to be \$100,000.00. His presence, we are told, could help to assure that correct procedures are utilized by the Court - but could not guarantee that end - and that in the current case against the enlisted men, an attempt would be made to introduce the testimonies which involve the principals to the murders, Christ, Avila, and Lopez Sibrian. We have decided against this action because even an "acusador particular" cannot guarantee an honest judge, and, by our

entry in this manner into the judicial process, it could be interpreted as an acceptance on our part of the authority of what we are now convinced is a thoroughly rotten judicial system.

Ambassador Hinton, who has been totally supportive of our efforts, may not agree with our decision with regard to the "acusador particular", but he is certainly not in disagreement regarding the difficulty of proceeding through this court system. In an article by Shirley Christian in the January 3, 1983 issue of the Miami Herald, he is quoted as saying:

"So all of this raises the question in your mind whether there is any legal procedure that will work when not only is the jury packed but the Supreme Court is packed. This is the same case in which they bombed the former president of the Supreme Court, and they frightened off or bought off enough justices to stay home when Sol Meza and Christ were being processed."

Again, before the American Chamber of Commerce in San Salvador on October 29, 1982, Hinton stated:

"Every day we receive new reports of disappearances under tragic circumstances. American citizens in El Salvador have been among the murdered, among the disappeared. It is any wonder that much of the world is predisposed to believe the worst of a system which almost never brings to justice either those who perpetrate these acts or those who order them? The 'Mafia' must be stopped. Your survival depends on it. The gorillas of this Mafia, every bit as much as the guerrillas of Morazan and Chalatenango, are destroying El Salvador."

Given this legacy of judicial corruption, and the need to overcome it, the AFL-CIO suggests that the first certification requirement (regarding human rights) be extended to read:

(El Salvador) is making a concerted and significant effort to comply with internationally recognized human rights, and to that end has taken concrete steps to restructure and reform their judicial system, and to remove it from corruption and political control and influence.

HUMAN RIGHTS - General

While we must oppose the certification on the basis of the handling of this case, so important to us, other aspects of the human rights situation in El Salvador seem to

be improving. The democratic campesino and trade union movements of El Salvador, with whom we work, represented by the FESINCONSTRANS and the Unidad Popular Democrática (UPD), have reported to us that there have been no UPD victims of the death squads in the last six months, and that other forms of harassment have diminished. This does not imply that the death squads and the leftist terrorism are not still factors in certain other sectors of Salvadoran society, but only that their targets for the moment seem not to be the UPD and its trade union activists.

At this point, we would like to note the presence in this chamber of the representatives of the UPD, who have again come to be with the AFL-CIO for these important hearings and who have actively contributed to the preparation of this testimony. They are: Francisco Zalafía, of the FESINCONSTRANS, Samuel Maldonado, of the UCS, Euladio Lopez Barahona, of the CTS, and Jorge Camacho, of the ACOPAI.

The UPD, whose associated unions represent approximately 500,000 Salvadoran workers and peasants, have prepared a "position paper" on some of the outstanding issues facing Salvadoran society. We have attached this important statement (Attachment No. 1) to our testimony, and urge that this document, which reflects the views of most Salvadoran workers, be thoughtfully considered by this Committee.

DEVELOPMENT OF DEMOCRATIC PROCESSES

The development of real democracy in El Salvador is a continuing and long-term process. The success of the Salvadoran people in holding free and honest elections in March of 1982, under the most horrendous of circumstances, is a lasting tribute to their desire to control their own political destinies, and must not be forgotten under the pressures of more immediate problems. The presidential elections are still, as promised, scheduled for March 1984.

We know that democratic organizations such as the UPD should, can, and do effectively remind elected officials of the responsibilities given to them by the people. The very fact that the UPD can criticize openly the acts of the government is proof that, starting from nothing only a few years ago, democracy is beginning to take root in El Salvador. This democratic process is still, however, a very fragile flower that must be nurtured by the U.S. Congress and this certification process.

It is also encouraging to us that the newly-formed Human Rights Commission, established by the Pact of Apaneca and reporting directly to its Political Commission, includes a representative of the UPD as the "Labor/Campesino" delegate on the Commission - a late, but welcome start toward popular participation in the political process.

DIALOGUE AND/OR NEGOTIATIONS

U.S. policy toward El Salvador, we are certain, will continue to encourage the electoral process as a means to solve political problems. If "dialogue" or even that much-maligned word "negotiations" would have the result of bringing the established democratic political parties currently associated with the guerrilla left into the electoral process, the AFL-CIO would favor dialogue. If, however, either "dialogue" or "negotiations" were used for the purpose of allowing the attainment of governmental power by the terrorist left or the return to power of the discredited oligarchy, other than by the electoral process, the AFL-CIO would be opposed to such efforts. An effective and guaranteed amnesty program, coupled with a mutual cease fire, would go a long way toward the democratization of El Salvador by encouraging leftist party participation in the process. The Peace Commission, contemplated by the Pact of Apaneca, would be the most appropriate Salvadoran authority to consider this most important issue, but, unfortunately, has not yet been constituted.

LAND REFORM

The land reform program has recorded significant progress during the last six month' period, but more particularly during the last three months. During November and December of 1982 and January of 1983 (estimated figure for January), the number of new applications has averaged approximately 3000 per month. This is a particularly important statistic, since new applications are the motor, if you will, of the program. When there are insufficient applications, obviously there can be no provisional titles and, ultimately, no definitive titles.

Explaining this surge of new applications are two principal factors: first, the concrete efforts of the Army in putting evicted campesinos back in their land and, second, an intensive campaign during the last few months of 1982 by the Financiera Nacional de Tierras Agrícolas, - FINATA - to inform campesinos of their rights under Decree 207, "Land-to-the-Tiller". Also aiding more recently in the process has been the cooperation between FINATA, and the UCS and other campesino groups in sending mobile teams into the countryside to help campesinos to fill out their applications. The net result of these activities has been to instill confidence among the campesinos that the program is a reality.

For your quick reference, we have attached a statistical summary (Attachment No. 2) which includes other statistics that we consider to be key indicators of progress (or the lack of it) of the land reform program. In addition, the U.S.A.I.D. monthly reports contain even more details of the program such as the dollar amounts of compensation, number of acres affected, and similar information. Please note that (including the estimated figure for January 1983) the number of applications under Decree 207 now total about 35,000 provisional titles; they are currently working on a backlog of 20,000 applications. This backlog, of course, has increased rapidly in the last three months.

The statistics for the issuance of definitive titles are less encouraging, and have led to a previously unforeseen problem. Only 1,050 (estimated, including January 1983) such titles have been given to the campesinos because the law states that compensation must be paid to former landowners before a definitive title can be given to the campesino beneficiary. For a country experiencing the economic difficulties of El Salvador, this has become a major obstacle to the completion of the program, and is an area of economic aid in which the U.S. Government might reasonably provide a solution. Such an aid component was the sole title of the Caribbean Basin Initiative supported by the AFL-CIO. Either by that medium or other special legislation, those monies should be provided to the land reform program.

The problem referred to above is the following: FINATA has chosen to interpret Administrative Decree 13 in such a way as to give the former landowner a right to challenge the campesino's provisional title (or simply his claim by submission of an application) up until the delivery of a definitive title. According to non-FINATA lawyers with whom we have spoken, this "right" is a result of a FINATA interpretation of the Decree, now transformed into FINATA policy. Those independent lawyers claim that the FINATA interpretation (and subsequent policy) is incorrect. More damaging, however, is the accusation by campesino leaders that approximately 12 per cent of the provisional titles issued are being contested by former landowners and that a large percentage of these contentions are being determined in favor of the former landlords. Since an investigation of the campesinos' claims had already been conducted prior to the issuance of the provisional titles, it is suspected that the inevitable corruption of former landlords paying for favorable decisions is already underway.

Taking a longer view of this situation, however, becomes more onerous. The number of such former landowner appeals has been accelerating in recent months and can be expected to accelerate even more as the former landowners become accustomed to the "success" of their newly-found appeals procedure. What are the

bases of such appeals? Examples are that the lands in question are potential forest lands, should have been classified as urban development lands (both excluded from the land reform program), that the land had been rented to a campesino by a farm manager without the consent of the former owner and, in general, any argument (no matter how absurd) that can be used by the politically hostile staff officers of FINATA.

On top of this, we have been informed by the UPD that to this point in time they have been unable to find any support among the political forces of El Salvador for a continuation of Decree 207, which, if not extended, will terminate on March 3, 1983. By our projections, between 35 per cent and 45 percent only (depending on the acceptance of the potential beneficiary universe of 125,000 or 150,000 eligible campesinos) will have been able to apply for their titles as of March 3rd. This new political situation comes at precisely the time that, as described above, the land reform statistics are showing an improvement in the program.

A couple of questions are in order. First, after three years of the program, why have not the potential beneficiaries submitted their applications? The answer is that many live in areas of armed conflict such as Chalatenango or Morazán, and land reform teams cannot get to those areas to help fill out, and later investigate, the campesino applications. Landowner threats and resistance, and resultant fear on the part of potential campesino beneficiaries vary from one part of the country to another. And finally, the philosophy and character of the local military commander has much to do with the success of the program in a particular Province. For example, a Commander may have been quite successful in his pursuit of the war, but in the area of land reform support he might be a dismal failure. Much work is left to be done in Cabanas, for example. It must be categorically recognized, however, that over all the Army has been extremely supportive of land reform.

The second question to which we cannot give an adequate answer is, what happened to the political support for extension of Decree 207? The campesinos never had the support of ARENA, so we need not question their lack of support. But where are the other political parties on this issue? Their lack of support at a time when the reforms are just starting to move forward at an acceptable pace is again starting to create another doubt as to the will to fulfill the land reform objectives.

Despite this current lack of support in El Salvador, the AFL-CIO continues to reflect the views of the UPD that Decree 207 must be continued until the last beneficiary has had an opportunity to exercise his rights. If that takes one year or two years or more, that's fine. But the process must be continued, according to our 1981 Convention mandate, or we will not be supportive of continued economic aid to El Salvador. Closing down the program on March 3rd by not extending Decree 207 is tantamount to killing the land reform when it is only 40 per cent (approximately) completed. That, if it occurs, will not constitute continued progress as required by the Certification process.

All of this simply shows that the right and left extremist forces in El Salvador have not given up. When intimidation did not stop the campesinos' desire to own land, decrees which encouraged evictions were passed. When evictions failed because of the actions of the Army, more subtle appeals' procedures were employed.

And the tragedy of this is that these actions on the part of a small but powerful elite of El Salvador can only, in the long run, serve the interests of the Marxist-Leninist left. If change does not come to El Salvador peacefully and through democratic means, it will come violently and from the mouth of a terrorist's rifle. The retrograde right, this tiny elite of privileged people—who formerly held El Salvador's future in their hands unfortunately believe that they can operate as their fathers did in the 1930's. They must be convinced, or pressured if you like, to accept

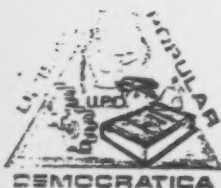
the changes that will benefit the vast majority of the citizens of El Salvador. They just may, in the process, improve their own future in freedom.

The time has come for "bottom lines." The AFL-CIO favors, on the basis of the miscarriage of justice in the Hammer-Pearlman-Viera murder investigations, a suspension of military aid until such time as those involved are brought to justice.

The AFL-CIO and the free trade union and campesino movements of El Salvador favor a continuation of economic aid only if that aid is conditioned. The conditions include the prosecution of the killers of our representatives and the reform of the judicial system as an integral part of the "concerted and significant effort to comply with internationally recognized human rights." Ironically, the lack of an adequate system of justice has been used as an excuse by both the right wing "death squads" in administering their own form of vigilante justice, and by the left's "peoples courts."

The AFL-CIO believes that a discontinuation of Decree 207 on March 3rd should result in the immediate suspension of economic aid as a failure to continue making "progress in implementing essential economic and political reforms, including the land reform program," as required by the certification process.

Mr. Chairman, on behalf of the AFL-CIO, I would again like to thank you for the high privilege of appearing before this distinguished Committee.



ATTACHMENT #1

UNIDAD POPULAR DEMOCRATICA. (U.P.D.)

ANALISIS DEL AÑO 1982 Y PERSPECTIVAS PARA EL AÑO 1983

La UNIDAD POPULAR DEMOCRATICA (U.P.D.), después de un análisis sereno ante el balance efectuado en los Órdenes Político, Económico y Social del año 1982, a los TRABAJADORES y PUEBLO EN GENERAL declara:

1.- ORDEN POLITICO.

Lo que debió haber sido el triunfo de la democracia, a partir de la manifestación cívica del pueblo salvadoreño del 28 de marzo, - dio como resultado una heterogénea composición gubernamental de diversas tendencias ideológicas y proyectos políticos, que en primer lugar, pusieron en peligro las transformaciones que estaban permitiendo la incorporación de amplios sectores populares a la vida económica y social del país. Fue evidente para el pueblo salvadoreño -- que unos buscaban el poder para construir y otros para destruir lo -- bueno que se estaba haciendo y volver a situaciones del pasado en -- que el pueblo no tenía la mínima esperanza de avanzar en sus condiciones políticas, económicas y sociales.

Lo complejo y disímil de la integración del gobierno ha impedido formular un programa básico para orientar los esfuerzos del pueblo del Estado, tendiente a la solución de los problemas más graves del país, restándole coherencia y unidad de criterio en el hacer gubernamental, elementos básicos para las realizaciones positivas de un buen Gobierno.

El Pacto de Apaneca, es un esquema idealista que podría contener realizaciones importantes, pero su inoperancia está permitiendo en la práctica, incluso, la violación de sus aspectos principales, - por sectores políticos que en el fondo no los comparten y mucho menos lo respetan y cumplen.

También el año 1982, se ha caracterizado políticamente por divergencias internas en los partidos tradicionales, efecto de la -- crisis y el surgimiento de organizaciones que a su juicio consideran



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la situación como oportuna para entrar a la batalla electoral, principalmente. Estos movimientos políticos se han realizado al margen del pueblo y para éste no tienen ningún significado actual. El pueblo salvadoreño y sus organizaciones democráticas han ido madurando políticamente a través del sufrimiento de estos años de violencia y cada vez es más difícil que se le engañe tan clínicamente como en el pasado. En los últimos meses del año pasado, el pueblo pudo observar y aún observa con mayor claridad, la fuerte rivalidad entre distintos poderes del Estado, lo que ha producido una situación de crisis, que a medida que el tiempo pasa se vuelve más inquietante.

Desde esta perspectiva política, el pueblo salvadoreño y en especial las grandes mayorías de obreros y campesinos siguen esperando la solución a sus graves problemas, y particularmente los trabajadores y sus organizaciones democráticas, que continúan a la espera de lograr una real participación en el proceso nacional, única forma de garantizar los intereses de las mayorías. Aunque según la conducta política del gobierno, éste parece manejar el concepto de que primero deben lograrse "ciertas cosas" y luego se hará participar a obreros y campesinos. Esto dice mucho acerca de cómo se concibe la actividad gubernamental y la importancia que se concede al pueblo salvadoreño.

Finalmente, cabe destacar que se ha observado durante 1982, un renacimiento de aquellos pequeños pero poderosos grupos que durante un corto tiempo perdieron el control político, pero que a partir del surgimiento de organizaciones políticas que les son afines o que son financiadas por ellos, están logrando rehacer su esquema de dominación político-económica, lo que para el pueblo en general no representa nada positivo, porque precisamente la existencia y acciones de esos grupos antidemocráticos y retrógrados ha generado en gran medida la actual crisis nacional con sus profundas consecuencias de vio-



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DEMOCRATICA

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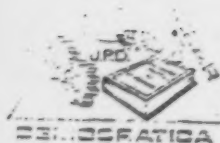
lencia incontrolada.

2.- ORDEN ECONOMICO.

Como es lógico, a la UNIDAD POPULAR DEMOCRATICA-U.P.D., le corresponde expresar el punto de vista del pueblo salvadoreño, obreros y campesinos, y por ello no se hacen en este análisis elucidaciones antojadizas sobre aspectos técnicos. En el campo económico se ha observado que los sectores populares son los más afectados. El costo de la vida ha continuado subiendo y para colmo los salarios de los trabajadores se han mantenido nominalmente estáticos, pero en términos reales se han deteriorado. Continúa la escasez de muchos productos, medicinas por ejemplo y lo más grave es que no se vislumbra todavía una solución a estos problemas. Los sectores económicamente dominantes han realizado fuertes campañas criticando al Gobierno y a la Reforma Agraria como factor principal de los cambios; los algodoneros, cafetaleros, industriales, etc. han hecho presión para obtener financiamiento adecuado y han tenido éxito, pues gran parte del financiamiento externo se ha destinado a estos grupos minoritarios, lo que de por sí, es un problema, ya que nadie garantiza el buen uso y resultado de esas inversiones, lo que además hace que se incremente el proceso de endeudamiento nacional.

Prueba de la concepción que se tiene de los problemas económicos nacionales lo constituye la integración de la recientemente creada Comisión de Reactivación Económica Nacional, en la que no tienen representación los millares de obreros y campesinos que con su fuerza de trabajo constituyen el pilar de la economía nacional, además de la fuerza socialmente más importante del país.

En esa Comisión están participando reconocidos representantes del tradicional poder económico, que incluso se han manifestado públicamente en contra de las reformas estructurales que SI son defendidas por sus beneficiarios: los obreros y los campesinos.



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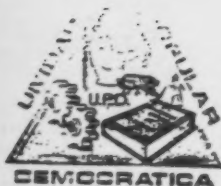
Por otro lado, a pesar de que ha existido financiamiento para ciertos sectores económicos, no se observa ningún incremento del empleo, agravándose este problema por los despidos realizados en función de cuestiones partidaristas en empleados públicos y municipales.

3.- ORDEN SOCIAL.

Como consecuencia de las cuestiones políticas y económicas, la situación social del país se ha agravado; la familia salvadoreña dividida, es presa del temor e incertidumbre impuestos por las fuerzas en contienda y otros grupos armados.

A pesar de los esfuerzos realizados, el respeto a los derechos humanos sigue siendo todavía una aspiración del pueblo, porque desafortunadamente se ha continuado con los abusos de poder y desviaciones institucionales que han significado profundas violaciones a los más elementales derechos de la persona y de la sociedad. El deterioro de las condiciones de salud, cultura, alimentación y nutrición -- del pueblo, entre otras necesidades básicas, es un agudo problema -- del país y los servicios estatales no alcanzan a cubrir ni siquiera las mínimas exigencias de los salvadoreños de escasos recursos económicos.

Pero fundamentalmente el gran factor desestabilizador de la Sociedad es el conflicto armado que a pesar de los esfuerzos que se hacen, continúa desangrando y enluteciendo a la gran familia salvadoreña, con el agravante de que se están comprometiendo cada vez más fondos y presentándose como el renglón al que el Gobierno presta más atención, con lo que se aleja más y más, las soluciones políticas en favor de lo militar. La crisis nacional ha caminado por un callejón sin salida, por lo menos esa es la percepción del pueblo que sufre y que está cansado de esperar.



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PERSPECTIVAS Y PLANTEAMIENTOS PARA 1983

Con este panorama, la UNIDAD POPULAR DEMOCRATICA -U.P.D., como representante auténtica de los legítimos intereses democráticos de amplios sectores populares de nuestro país, considera oportuno -indicar cuales siguen siendo sus metas y orientaciones de lucha para 1983:

- 1- Búsqueda y activación de aquellos mecanismos que aseguren la consecución de la paz para todos los salvadoreños.
- 2- Implantación de un programa de desarrollo económico-social para el país con amplia participación real de obreros y campesinos en su estructuración y puesta en práctica.
- 3- Defensa y consolidación de las reformas estructurales, especialmente la REFORMA AGRARIA, definiendo soluciones a los problemas - que aún puedan encontrarse en la implantación de las mismas.
- 4- Continuar los esfuerzos relativos al respeto a los Derechos Humanos y erradicar aquellas violaciones que provienen de instituciones u organizaciones sobre las que supuestamente se ejerce control. Apresuramiento de las investigaciones y aplicación de la justicia a quienes resulten culpables.

Finalmente y más concretamente, la UNIDAD POPULAR DEMOCRATICA, U.P.D., exige para 1983, a los responsables de los ORGANISMOS DEL ESTADO que conforman el Gobierno de la República, lo siguiente:

- a) PRORROGA DEL DECRETO 207, E IMPLEMENTACIÓN DE LA 2a. ETAPA DE LA REFORMA AGRARIA, PARA QUE SE DE CONTENIDO POSITIVO A LA PROCLAMA DE LA FUERZA ARMADA DEL 15 DE OCTUBRE DE 1979.
- b) DEROGATORIA, FUNDAMENTALMENTE DEL DECRETO 544 Y DE TODOS AQUELLOS QUE LESIONAN LOS INTERESES ECONOMICOS Y SOCIALES DE LOS TRABAJADORES SALVADOREÑOS.
- c) REORGANIZACIÓN DE LA CORTE SUPREMA DE JUSTICIA, EN VIRTUD DE NO CUMPLIR CON LAS LEYES DE LA REPUBLICA EN LO QUE SE REFIERE A LA -



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PRONTA Y CUMPLIDA JUSTICIA: CON RESPECTO A LOS REOS POLITICOS, -
ASI COMO AL CASTIGO DE LOS INVOLUCRADOS Y RESPONSABLES DE LOS CRI-
MENES COMETIDOS CONTRA ASESORES Y LIDERES SINDICALES OBRERO-CAMPE-
SINOS.

- d) AUTENTICA REORGANIZACION PARA EL LOGRO DE LOS VERDADEROS FINES DE LA REFORMA AGRARIA, ESTIMANDO CONVENIENTE EFECTUAR CAMBIOS EN LA DIRECCION DEL PROCESO AGRARIO, COMO ERRADICANDO AQUELLOS ELEMEN-
TOS QUE LO OBSTACULIZAN Y LO REVIERTEN, ASI MISMO EN LA BANCA ES-
TATIZADA PARA QUE SE CUMPLA CON SUS VERDADEROS FINES ECONOMICOS,
SOCIALES Y FINANCIEROS, AL SERVICIO DE LAS MAYORIAS Y NO DE UNA -
MINORIA QUE CONTINUA USUFRUCTUANDO SUS ANTIGUOS BENEFICIOS.
- e) PARTICIPACION DE LOS TRABAJADORES ORGANIZADOS EN DEPENDENCIAS DEL ESTADO, CON PODER DECISORIO, TALES COMO LA JUNTA MONETARIA, BANCO CENTRAL DE RESERVA, BANCO DE FOMENTO AGROPECUARIO, INSTITUTO DE TRANSFORMACION AGRARIA, FINANCIERA NACIONAL DE TIERRAS AGRICOLAS, COMISION DE REACTIVACION ECONOMICA, Y OTROS.

Consecuentemente pedimos que el decidido apoyo economico y di-
plomático de paises democráticos amigos del pueblo salvadoreño, ins-
tituciones financieras internacionales, ayude a que la crisis sea --
más razonable, especialmente porque parte de esa ayuda debe de venir
para consolidar la Reforma Agraria y resolver algunos problemas so-
ciales muy graves; porque el pueblo salvadoreño y las organizaciones
democráticas que lo representan dentro de la UNIDAD POPULAR DEMOCRA-
TICA-U.P.D., entienden que la ayuda internacional se da sobre la ba-
se de que contribuya a cimentar LA PAZ Y LA DEMOCRACIA y no para vol-
ver al pasado sobre el sufrimiento de los más humildes.

POR LA LIBERTAD, LA DEMOCRACIA, LA JUSTICIA SOCIAL, LA



UNIDAD POPULAR DEMOCRATICA. (U.P.D.)

DEMOCRATICA

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INDEPENDENCIA Y LA SOBERANIA NACIONAL DE EL SALVADOR

UNIDAD POPULAR DEMOCRATICA. U.P.D.

COMITE POLITICO:

SAMUEL MALDONADO

SALVADOR CARAZO

MIGUEL ANGEL JARQUEZ

JORGE CARACHO

GABRIEL RILONA ARAUJO

ALEJANDRO ESCOBAR CARTAGENA

JUAN ANTONIO ARGUETA

FRANCISCO ZALDANA



UNIDAD POPULAR DEMOCRATICA. (U.P.D.)

(TRANSLATION)

An Analysis of the Year 1982 and Prospects for the Year 1983

The Popular Democratic Unity (UPD) after a careful analysis of the situation resulting from the events that occurred during 1982 in the political, economic and social domains hereby declares on behalf of the workers and the people in general,

I. Political Domain

What could have been the triumph of democracy following the civic demonstration of the people of El Salvador on March 28, brought into being a heterogeneous composition of the government comprising a variety of ideological tendencies and political projects, which, in the first place, endangered the changes that had permitted the incorporation of vast popular sectors in the economic and social life of the country. It was evident to the Salvadoran people that some were seeking power to build and others to destroy the good things that were being done, and to return to the situation existing in the past, when the people did not have the least hope to improve its political economic and social conditions.

The complexity and indefiniteness of the integration of the government has prevented the drafting of a basic program to guide the efforts of the people or the government, and intended to achieve a solution to the country's most serious problems. This condition has affected the coherence and the unity of criteria for government actions, which are the basic elements for positive accomplishments of a good government.

The APANCA pact is an idealistic scheme which could have had important accomplishments, but its stagnation is actually allowing even the violation of its principal aspects by political sectors that basically do not share them, much less respect or comply with them.

Also, 1982 has been politically characterized by internal differences in the traditional parties, a result of the prevailing crisis and of the emergence of certain organizations that considered this situation primarily as a good opportunity to enter into the electoral campaign. These political movements have been carried out without communication with the people and have no meaning for it at present. The people of El Salvador and its democratic organizations have matured politically through the suffering of these years of violence, and consequently it has become more and more difficult to cynically beguile them as in the past. In the final months of last year the people were able to observe with even greater clarity the strong rivalry existing in the different powers of the government, and this has brought about a crisis situation that turns more and more worrisome as time goes by.

From this political perspective, the Salvadoran people, the great masses of workers and peasants in particular, continue to wait for a solution to its serious problems, and those that affect in particular the workers' democratic organizations, those that are still waiting for a real participation in the national process, which is the only way to guarantee the interests of the majorities. Yet, in judging by the government's political conduct, it appears to be following the prescription that certain things must be accomplished first, and the workers and peasants will be permitted participation later. This is very telling as far as the conduct of the government activity is concerned and about the importance given to the Salvadoran people.

Finally, it ought to be stressed that throughout 1982 one could observe a reemergence of the small, but powerful groups that in a short time had lost political control, but are now succeeding in rebuilding their pattern of political and economic domination on the wake of the surge of kindred political organizations or of organizations financed by them, and this, for the people in general, is not at all a positive development. For it is precisely the existence and the actions of these antidemocratic and retrograde groups that in a large measure have generated the present national crisis with its profound aftermath of uncontrolled violence.

2. Economic Domain

As logic dictates, it behooves the Popular Democratic Unity (UPD) to express the viewpoint about the Salvadoran people, and about the workers and peasants, and for that reason this analysis does not contain capricious intellectualizations about technical aspects. In the economic domain it has been observed that the popular sectors are the most affected. The cost of living has continued to go up, and to make things worse, workers' salaries have remained nominally static, but in real terms they have deteriorated. Shortages of many commodities, medicine, for example, continue - and the worst is that as yet no solution to these problems looms in sight. The economically dominant sectors have waged strong campaigns criticizing the government and the land reform as a major factor in the changes occurred. The cotton growers, the coffee growers, the industrialists, etc., have pressured to obtain adequate financing and succeeded in doing so because a large part of the external financing has been earmarked for these minority groups, which is in itself a problem, since nobody is there to guarantee the proper use and the results of such investments, and all this is a cause of an increase in the national indebtedness.

Evidence of the concept held of the national economic problems is the integration of the recently created commission for national economic recovery, in which there is no representation for the thousands of workers and peasants whose labor constitute the pillars of the national economy and who are the forces most socially important in the country.

In the commission participate well known members of the traditional economic powers, the ones who have gone to the extreme of declaring themselves publicly against the structural reforms, which are the ones really defended by their beneficiaries: the workers and peasants. On the other hand, although there has been financing for certain economic sectors there has been no observable increase in employment, a problem that is worsening on account of the layoffs resulting from partisan reasons among public employees and municipal workers.

3. The Social Domain

As a result of the political and economic questions, the social situation of the country has worsened; the Salvadoran family is divided, expressing the fear and uncertainty imposed by the contending forces and other armed groups.

In spite of the efforts made, the respect for human rights continues to be an aspiration of the people because, unfortunately, abuses of power continue and institutional deviations have involved profound violations of the most elementary rights of the person and of society. The deterioration of health conditions, culture, food and nutrition of the people, among other basic needs, is an acute problem in the country that the state services cannot meet even at a minimum level for these Salvadorans with the lowest economic resources.

Basically, the greatest destabilizing factor in the society is the armed conflict, which, in spite of all efforts continues to bleed and to fill with sorrow the great Salvadoran family, with the aggravating circumstance that additional funds are being committed in greater amounts, being the item to which the government gives most attention, a factor that removes more and more the political solutions in favor of the military. The national crisis has reached a dead-end street. At least this is the perception of a people who suffer and is tired of waiting.

PROSPECTS AND PROPOSALS FOR 1983

In the face of this picture, Popular Democratic Unity (UPD) as the genuine representative of the legitimate democratic interest of broad popular sectors in our country considers it appropriate to point out which are the goals and guidelines for the struggle that it will continue to pursue in 1983.

1. Search and implementation of the mechanisms that ensure the peace for all Salvadorans.
2. Establishment of a social and economic development program for the country with ample and genuine participation of workers and peasants in the structure and execution of the same.
3. Defense and consolidation of the structural reforms, in particular the land reform, defining the solutions to problems that could still be found in the implementation of the same.
4. To continue the efforts related to the respect of human rights and the eradication of violations originating in institutions or organizations over which they purportedly exercise some control.
5. Hastening of investigations and application of justice to the guilty.

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Finally and specifically, Popular Democratic Unity (UPD) demands the following for 1983 from those who are in charge of the state agencies that form the national government:

a. Extension of Decree 207 and implementation of the second stage of the land reform so that it will be fulfilled in the spirit and with the positive intent of the proclamation of the Armed Forces issued on October 15, 1979.

b. Deleting in its entirety Decree 544 and all others that are damaging to the economic and social interests of the Salvadoran workers.

c. Reorganization of the Supreme Court on the basis of non-compliance with the national laws in regards to the prompt and faithful execution of justice in the matter of political prisoners, as well as in the punishment of those involved in and responsible for the crimes committed against labor and peasant sectors and leaders of peasants and workers' unions.

d. Authentic reorganization designed to attain the true objective of the land reform by looking into the convenience of changing the direction of the agrarian process and eradicating the factors that hinder it and distort it. The same thing in regards to the destabilized banking system so that it complies with its genuine economic, social and financial objectives in the service of the majority instead of serving a minority who continues to enjoy all its former benefits.

e. Participation of the organized workers in state agencies with decision-making power, such as the Monetary Board, the Central Reserve Bank, the Bank for Agricultural Development, the Institute for Agrarian Transformation, the National Finance Agency for Agricultural Lands, the Commission for Economical Rehabilitation and others.

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We therefore ask for the determined economic and diplomatic support of democratic countries, friends of the Salvadoran people, and of International Financial Institutions so that the crisis may be brought to reasonable proportions, especially since a portion of that aid must be assigned to the consolidation of the land reform and to the resolution of very serious social problems. This is because the Salvadoran people and the democratic organizations that represent it in Popular Democratic Unity (UPD) understand that international aid is given on the basis that it will contribute to cement peace and democracy and for a no return to the past at the cost of the suffering of the poorest.

We stand for Freedom, Democracy, Social Justice, Independence and National Sovereignty in El Salvador.

UNIDAD POPULAR DEMOCRATICA, U.P.D.

SAMUEL MALDONADO

SALVADOR CARRAZO

MIGUEL ANGEL VASQUEZ

JORGE CAMACHO

GABRIEL PILONIA ARAUJO

ALEJANDRO ESCOBAR CARTAGENA

JUAN ANTONIO ARRIETA

FRANCISCO ZALDANA CABRERA

January 20, 1983

EL SALVADOR AGRARIAN REFORM SELECTED STATISTICS

	1982 July	Aug	Sep	Oct	Nov	Dec	1983 Jan	Feb	Mar	Apr	May	Jun
Applications for titles filed under Decree 207 (absolute numbers)	155	656	734	1,268	4,923	4,961						
Applications for titles filed under Decree 207 (cumulative numbers)	37,235	37,881	38,615	39,883	44,808	49,769						
Provisional titles granted under Decree 207 (absolute numbers)	269	399	204	1,198	263	261						
Provisional titles granted under Decree 207 (cumulative numbers)	32,349	32,749	32,952	34,150	34,413	34,674						
Definitive titles granted under Decree 207 (absolute numbers)	148	0	0	137	0	0						
Definitive titles granted under Decree 207 (cumulative numbers)	251	251	251	408	408	408						
Property owners compensated under Decree 207 (absolute numbers)	4	1	27	18	23	24						
Property owners compensated under Decree 207 (cumulative numbers)	12	13	40	58	81	105						
Total number of Phase I properties	328	328	328	328	328	328						
Number of Phase II cooperatives membership	29,755	29,755	29,755	29,755	29,755	29,755						
Former owners Phase I farms compensated (absolute numbers)	0	1	1	0	0	4						
Former owners Phase I farms compensated (cumulative numbers)	124	125	126	126	126	130						
Property titles issued to cooperatives (absolute numbers)	12	0	0	0	4	0						

The CHAIRMAN. Thank you, Mr. Doherty. We will, I assure you, place the highest priority on this. As you could tell, I had not read your testimony before I made my comments on the same thing. I am just losing real faith in where we can go in the whole human rights field if the institution themselves are paralyzed and are just an effrontery to any sense of justice.

So we will raise to a very high level this particular question. I personally intervened with the Director of the FBI during the investigations of these to be absolutely certain all of the facilities were available, they were being utilized, that were requested, asked for, followed up, et cetera. We followed it day by day practically. But at this stage we simply must do something on it, and we certainly will.

We will now turn to Michael Posner, Lawyers Committee for International Human Rights, New York, to testify.

**STATEMENT OF MICHAEL H. POSNER, ESQ., LAWYERS COMMITTEE
FOR INTERNATIONAL HUMAN RIGHTS, NEW YORK, N.Y.**

Mr. POSNER. Thank you, Mr. Chairman, for inviting me to testify.

For more than 2 years the Lawyers Committee for International Human Rights has served as legal counsel to the families of the four U.S. churchwomen who were murdered in El Salvador in December 1980. My comments today reflect the families' continuing concerns about the failures of both our Government and the Government of El Salvador to properly investigate and prosecute those responsible for this horrible crime.

Last month I visited El Salvador on behalf of the four families. I was accompanied by William Ford, the brother of Ita Ford; and R. Scott Greathead, a lawyer on our board. In a 10-day period we met with a number of Salvadoran Government officials, including Dr. Mario Adalberto Rivera, the Fiscal General of the Republic, and with the presiding judge in the case, Bernardo Rauda Murcia. We also held a series of meetings with private lawyers and experts on the Salvadoran legal system, and with U.S. Embassy officials, including Ambassador Hinton.

Based on our visit we continue to be gravely concerned about the lack of progress in this case. Today, after more than 2 years, the Government of El Salvador remains unwilling or unable to bring those who are responsible to trial. While the State Department's recent certification report makes note of significant developments in the case, judged by any reasonable standard we believe that the record reveals almost no real progress and a shocking pattern of official indifference, incompetence and ill will—attitudes which still prevail.

It simply cannot be said, in the terms of the certification statute, that there have been good faith efforts either to thoroughly investigate the crime or to prosecute those who are responsible.

Mr. Chairman, there is an inherent contradiction between Secretary Enders' statements this morning "concerning the breakdown in the judicial process and his persistent assertions of" progress in this case. It is simply not accurate to say there has been any real progress in this case in the last 6 months, or in terms of the certification statute itself that there have been any good faith efforts either to thoroughly investigate the crime or to prosecute those who were responsible.

In my testimony this afternoon I wish to emphasize three points. The first is that the current prosecution of five low ranking members of the national guard is in a state of complete disarray.

The second is that there has been a total failure on the part of both our Government and the Government of El Salvador to pursue evidence suggesting higher orders.

The third point is that there continue to be problems both with the FBI and the State Department, and a lack of cooperation with the four families in their efforts to pursue the case.

With regard to the prosecution itself, based on our interviews it appears to us that the Attorney General of El Salvador and his staff are both shockingly uninterested and wholly unprepared for trial. Specifically, these prosecutors still have not developed a theory as to the motive for the crime or what the defenses are likely to be. Although they concede that acting on higher orders could be a defense, they continue to ignore existing evidence that there were orders from superiors to apprehend the women.

I want to point to one statement in particular of which they were completely unaware. That was a statement taken by the FBI in Los Angeles 1 year ago, in February 1982. The testimony of this witness, a former national guard sergeant named Dagoberto Martinez Martinez, is critical to the successful prosecution of this case. He told the FBI last February that he was at a meeting called by the head of the national guard, Vides Casanova, approximately 1 week after the women were murdered.

At that meeting the head of the national guard, Vides Casanova, told his commanders that there was information or a suggestion that the national guard may have been involved. Following the meeting, Sergeant Martinez was approached by Luis Antonio Colindres Aleman, who is one of the five guardsmen now being prosecuted. Colindres confessed to him, yet we are told that his confession may not be part of this case despite the fact that it may be critical to a successful prosecution.

Before we went to El Salvador we tried to find out from the State Department and the FBI why this matter was not being pursued. We were told that it is up to the judge and the prosecutors. When we met with prosecutors in El Salvador, they not only were not interested, they had never even seen the statement. They told us they had no intention of pursuing it.

We went to the judge, and he said he had no capacity to pursue it, but both the prosecutors and the judge suggested that we come back to the United States and try to pursue it on our own.

One of the things I would like to ask, Senator, is that we receive whatever help we can from this committee in simply locating Sergeant Martinez. While he is apparently still in California, the FBI and the State Department continue to refuse to make his whereabouts known to us.

We met with Secretary Enders yesterday, and again he threw up his hands and said he didn't know what we was going to do about it.

The CHAIRMAN. Well, perhaps we can get it made known to us and then determine what we can do to give you any assurances at all within the framework of the way in which we get the information.

Mr. POSNER. I appreciate that.

In addition, while in El Salvador we learned that the prosecutors had no intention of investigating the possibility of higher orders or prosecuting high-ranking members of the Salvadoran Armed Forces for any coverup. With regard to coverup, they told us that they do not regard it as a serious crime, although they do not dispute the likelihood that one took place.

Considering all of these problems, it can only be concluded that the lawyers in the Fiscal's office are either incompetent or deliberately ignoring key evidence or both.

Regarding the status of the case, in his testimony this morning Secretary Enders noted the trial has begun, and we are waiting for a verdict. This statement is I think misleading. It has been almost a year since the case has been placed under Judge Rauda's jurisdiction. Although he completed his investigation last November and sought to elevate the case to plenary or trial stage, that action has challenged and effectively stayed by defense lawyers who have filed an appeal contending there is insufficient evidence to go forward. It may be months before the case does proceed, and when it does, the prosecutors estimate that it will be at least another 3 months before the case goes to a jury.

Finally, with regard to the issue of information, both the FBI and the State Department continue to deny making information available to us. In my written testimony, which I am not going to read now, I list seven points where we need your assistance.

The first concerns X-rays that were done during the autopsy. We are told that these X-rays now are missing.

The second is documents from the Embassy's files to which we are being denied access. A third concerns the FBI's entire record of the case which is either in the hands of the prosecutors or the judge. The court record itself was impossible for us to get because the only copy of it was in the hands of defense lawyers.

Mr. Chairman, in conclusion it has been 2 years since the deaths of the four women. Since December 1980, the case has taken on a special significance. To be sure, only a narrow parochialism could judge these murders worse or even more important than the tens of thousands of murders of Salvadoran citizens by government armed forces, but the case of these four churchwomen has come to be symbolic of the brutalities that mark daily life in El Salvador.

These killings and the murders of two U.S. labor advisers have also become symbolic, because at a period when perhaps 30,000 civilians, including the country's archbishop, have been murdered, many by government forces, only the cases of the North Americans are even being investigated.

For this reason, the demand to fix responsibility in this case becomes part of a far wider demand: that elementary respect for human life and human rights may be restored and recognized as obligations by those who govern El Salvador.

Thank you, Mr. Chairman.

[Mr. Posner's prepared statement follows:]

PREPARED STATEMENT OF MICHAEL H. POSNER

Mr. Chairman, thank you for inviting me to testify. My name is Michael Posner. I am the Executive Director of the Lawyers Committee for International Human Rights in New York. For more than two years the Lawyers Committee has served as legal counsel to the families of the four United States Churchwomen who were murdered in El Salvador in December 1980. My comments today reflect the families' continuing concerns about the failures of both our Government and the Government of El Salvador to properly investigate and prosecute those responsible for this horrible crime.

Last month I visited El Salvador on behalf of the four families. I was accompanied by William Ford, the brother of Ita Ford; and R. Scott Greathead, a lawyer on our Board. In a ten day period we met with a number of Salvadoran government officials, including Dr. Mario Adalberto Rivera, the Fiscal General of the Republic, and with the presiding judge in the case, Bernardo Rauda Murcia. We also held a series of meetings with private lawyers and experts on the Salvadoran legal system, and with United States Embassy officials including Ambassador Hinton. Finally, we visited and interviewed witnesses at the murder site and in the town of Chalatenango where Ita Ford and Maura Clarke lived, worked and are now buried.

Since our return we have prepared a report on the status of the case, entitled: "Update—Justice in El Salvador: A Case Study." Yesterday we presented a copy of this report to representatives of the State Department during a meeting with members of the families. I ask that a copy be included in the record of this hearing.

A. THE PROSECUTION OF THE FIVE NATIONAL GUARDSMEN IN EL SALVADOR

Based on our visit we continue to be gravely concerned about the lack of progress in this case. Today, after more than two years, the Government of El Salvador remains unwilling or unable to bring those who are responsible to trial. While the State Department's recent certification report makes note of "significant developments" in the case, judged by any reasonable standard we believe that the record reveals almost no real progress and a shocking pattern of official indifference, incompetence and ill-will—attitudes which still prevail. It simply cannot be said, in the terms of the certification statute, that there have been "good faith efforts" either to thoroughly investigate the crime or to prosecute those who are responsible.

The Fiscal General's Office

The attitude of Salvadoran authorities is perhaps best illustrated by the activities of the prosecutors themselves. While in El Salvador we had two meetings with the Fiscal General Dr. Mario Rivera, and a third meeting with two of his assistants. There are four people in his office assigned to the case whom Dr. Rivera calls the best lawyers in his office. Based on our interviews it appears that Dr. Rivera and his staff are both shockingly uninterested and wholly unprepared for trial.

Specifically, the prosecutors still have not developed a theory as to the motive for the crime or what the defenses are likely to be. Although they concede that "acting on higher orders" could be a defense, they continue to ignore existing evidence that there were orders from superiors to apprehend the women. In fact, they were completely unaware of the two most important witness statements addressing this issue, both of which are now part of the court's record.

In addition, they have no intention of prosecuting higher ranking members of the Salvadoran armed forces for a cover-up because they do not regard it as a "serious crime." The Fiscal General, Dr. Rivera, does not dispute the likelihood that such a cover-up took place. Considering all of these problems, it can only be concluded that the lawyers in the Fiscal's office are either incompetent or deliberately ignoring key evidence, or both.

The Case Before Judge Rauda

It has been almost one year since the case was placed under Judge Rauda's jurisdiction. Although he completed his investigation in November and sought to elevate the case to the plenary or trial stage, that action has been challenged by defense lawyers who have filed an appeal contending that there is insufficient evidence to go forward.

Perhaps the most troubling obstacle facing Judge Rauda in his handling of the case is intimidation by government security forces and para-military groups. Rauda is the third judge assigned to the case; both of his predecessors have removed themselves, presumably because of such fears. In fact, Mario Rivera, the current Fiscal General of El Salvador, resigned as a judge after this case was assigned to him.

In El Salvador, judges and lawyers are often themselves the targets of official violence. A report by the International Commission of Juries concludes that:

"The judiciary has been made impotent by fear, while magistrates who have attempted to investigate crimes attributed to the security forces or right-wing groups have been immediately attacked, and several of them have been murdered." (ICJ, "Human Rights in the World: El Salvador," 26 ICJ Review.)

Salvadoran judges—those who survive—seem to find ways to avoid bringing homicide charges to trial. As of last summer, we were told that Judge Rauda had sixty murder cases pending before him—and not one had been closed. Each week he inspects five or six bodies—new murders in which no investigation is even opened.

If and when the case does proceed to plenary, and if Judge Rauda is still presiding, the prosecutors estimate that it will be at least another three months before the case goes to the jury. At this juncture, and especially when one considers the history of this case, it is difficult to imagine that anyone will ever be convicted and punished.

B. THE QUESTION OF HIGHER INVOLVEMENT

In our view both Salvadoran and United States authorities are purposefully ignoring significant evidentiary leads that point to the involvement of higher authorities. There is now evidence in the court's record that, on the night of the killing, Subsergeant Colindres Aleman told another member of the National Guard Julio Cesar Valle Espinoza, that the five accused were acting under "superior orders" to detain the four women. This evidence is simply not being pursued.

The circumstances of the crime inescapably suggest a political motive rooted in the increased tension between the Church and the Army in Chalatenango where two of the women were working. In the months preceding the killing these tensions had escalated sharply, culminating in several death threats against churchworkers in the area.

On several occasions during this period the Army commander in Chalatenango, Colonel Ricardo Pena Arbaiza, accused members of the Church of "subversive" activities. He also made these accusations to leaders of El Salvador's armed forces.

On December 2, 1980, the day the women were murdered, a death threat was received by the Church which contained a list of names of people to be killed. The list contained the names of virtually everyone on the parish staff, including Ita Ford and Maura Clarke. An unidentified man told a parish worker that the killings would begin that night.

On December 3, 1980, Church officials visited Colonel Pena Arbaiza. While he claimed to have no information on the whereabouts of Ita Ford and Maura Clarke, he repeated the charge that the Church was engaged in subversive activities. He showed his visitors hand grenades, blindfolds and "subversive" literature, all of which, he alleged, had been taken from members of the Church.

Several weeks after the murders, Colonel Pena Arbaiza was transferred out of Chalatenango. He is still an active member of the Salvadoran army, now serving as a military attache in Tegucigalpa, Honduras. These death threats and Colonel Pena Arbaiza's potential involvement have never been seriously investigated.

C. THE QUESTION OF COVER-UP

There also is evidence in the court's record that Subsergeant Colindres Aleman confessed his involvement in the killings to at least one superior officer, Sergeant Dagoberto Martinez Martinez in December 1980. Sergeant Martinez retired from the National Guard in December 1980 and moved to Los Angeles where he was interviewed by the FBI in February 1982. The Fiscal General has said that he has no interest in further examining Sergeant Martinez or in considering his possible involvement in a cover-up.

D. THE ROLE OF THE UNITED STATES GOVERNMENT

The State Department

Despite these deficiencies in the investigation and prosecution, the United States Department of State continues to cite "significant developments" and progress in the case. In so doing, the State Department continues to reject evidence indicating that higher military officials ordered the crime and covered it up. The recent certification report simply concludes that "the overwhelming weight of the evidence demonstrates" that the five guardsmen acted on their own. Such speculation endorses the Salvadoran Government's refusal to explore this issue, and thus adds the weight of the United States Government to the already strong pressures against conducting a thorough investigation in El Salvador.

The State Department also continues to resist efforts by the families to obtain documents in its possession relating to this case. Since June 1981, acting on behalf of the four families, the Lawyers Committee has sought to obtain this information through the Freedom of Information Act. A lawsuit filed in June 1982 is now pending in Federal Court in the Southern District of New York. The process is slow and the State Department's lawyers are fighting us every step of the way.

The FBI

Since December 1980, Agents of the FBI have also been involved. They have interviewed witnesses, collected physical evidence and provided guidance and technical assistance to Salvadoran investigators. Neither the prosecutors nor the judge in El Salvador are in possession of this information despite its critical importance to a successful prosecution. Either the prosecutors are being denied access to this information by the FBI or they simply are not interested in seeing it. On January 14, 1983, while we were in El Salvador William Ford formally requested the Fiscal General to obtain this material from the FBI.

For two years the FBI has refused to make this information available to the families, despite both formal and informal requests. In a Freedom of Information Act lawsuit filed in New York by the Lawyers Committee, the FBI has acknowledged that, as of March 1982, it had 180 documents, comprising approximately 600 pages, which are relevant to this case. None of these documents have been made available to the families, and FBI lawyers continue to resist giving the families access to anything.

E. THE ACUSADOR PARTICULAR

In the last few months, in an effort to contribute constructively to the process, the families have given serious consideration to the hiring of an acusador particular or private prosecutor. Under Salvadoran law, the family of a victim may be represented in any criminal proceeding by a private Salvadoran lawyer who acts as a co-prosecutor.

Since last summer the four families have made a concerted effort to gather as much information as possible about the Salvadoran judicial process, and have met with a number of prominent Salvadoran lawyers in this regard.

On the basis of these meetings and other information, the families have decided that they are not, at this time, prepared to hire an acusador particular. Thus far the families have been unable to identify any lawyer in El Salvador who is willing and able to pursue an independent investigation of all leads in this case. Not surprisingly, a number of very capable lawyers in El Salvador have effectively declined to take the case because of grave and undoubtedly justified fears that their lives may be jeopardized if they become involved. Some have told us that the Salvadoran Armed Forces are extremely concerned that neither this case nor any other against members of the Armed Forces should even be tried. Under these circumstances the effective involvement of any private lawyer has become virtually impossible.

While the families wish to keep this option open, they cannot be expected to make a decision without information as to where the case stands. It is in this regard that the Foreign Relations Committee, and other Members of Congress, can play an important role in helping us to obtain information from our own government and the Government of El Salvador.

F. THE NEED FOR ADDITIONAL INFORMATION

While in El Salvador, and acting on behalf of the four families, we made a number of requests for documents and information relevant to the prosecution of this case. Specifically, we now seek to obtain the following material:

1. *Autopsy x-rays of Ita Ford and Maura Clarke.* The Forensic Expert who conducted the autopsies says that a hospital in Chalatenango has them. The hospital claims that the Fiscal General's office has them. The Fiscal General's office denies having received them.

2. *Documents from the United States Embassy's Files.* Because evidence seems to be scattered from the FBI's office in Washington to the court's file in Zacatecoluca, the Embassy's file in San Salvador should become a repository for everything. The families seek to learn what is in the Embassy's file, and if possible to obtain copies of all relevant documents. A decision as to whether to release this material will be made by the State Department in several weeks, after an index of these materials has been completed.

3. *Documents/Evidence from the FBI.* On January 14, 1983, William Ford formally requested the Fiscal General of El Salvador to obtain the FBI's complete file. He also requested that this information be made available to the families. We were informed that the Embassy would discuss this matter with Salvadoran officials.

4. *The FBI's Polygraph Tests.* We had a number of discussions concerning polygraph tests of the accused guardsmen performed by the FBI. We were told that no one in El Salvador, including the Embassy, has the actual test questions and graphs. In fact, neither the judge nor the prosecutors have ever seen them. Both Judge Rauda and Fiscal General Rivera told us that they have no objection to our obtaining them.

5. *Information as to the Whereabouts of Sergeant Dagoberto Martinez Martinez.* Former Sergeant Martinez provided an important sworn affidavit to the FBI in Los Angeles in February 1982. Both the Fiscal General and the Judge told us that they had no objection to our interviewing Martinez in the United States. In fact, Judge Rauda said he would be interested in receiving any additional information that we received from him. Apparently the decision on whether to give us Sergeant Martinez' address now rests with the FBI and the State Department.

6. *The Court Record.* Judge Rauda told us that he had no objection to providing the families with a copy of the court's record. Unfortunately, the case (and apparently the only record) was transferred to an appeals court in San Vicente before these materials were copied. We have asked the Embassy to help provide these and new materials as they become available. We are interested, for example, in receiving a copy of the appeals documents that have recently been filed in the case.

7. *Additional Information on Colonel Ricardo Pena Arbaiza and Others.* We have requested the Embassy to provide us with additional information about several people who are potentially relevant to the prosecution. One is Colonel Ricardo Pena Arbaiza, who was the army commander in Chalatenango in December 1980.

Mr. Chairman, in the two years since the deaths of the four women, their case has taken on a special significance. To be sure, only a narrow parochialism could judge these murders worse or even more important than the tens of thousands of murders of Salvadoran citizens by government armed forces. But the case of the four churchwomen has come to be symbolic of the brutalities that mark the daily life in El Salvador. These killings (and the murders of two United States Labor Advisors), have also become symbolic because in a period when perhaps 30,000 civilians, including the country's Archbishop, have been murdered, many by government armed forces, only the cases of the North Americans are being investigated. For this reason, the demand to fix responsibility in this case becomes part of a far wider demand, that elementary respect for human life and human rights may be restored and recognized as obligations by those who govern El Salvador.

UPDATE

JUSTICE IN EL SALVADOR: A CASE STUDY

**A REPORT ON THE INVESTIGATION
INTO THE KILLING OF FOUR U.S.
CHURCHWOMEN IN EL SALVADOR**

February 1, 1983

**LAWYERS COMMITTEE FOR INTERNATIONAL
HUMAN RIGHTS**

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INTRODUCTION

On December 2, 1980 four United States churchwomen, Ita Ford, Maura Clarke, Jean Donovan and Dorothy Kazel, were murdered in El Salvador. In the period since their death, the treatment of this case has taken on significance which transcends the sorrow of their families and friends.

The families of the women and other Americans have refused to let their killing be forgotten or ignored. To be sure, only a narrow parochialism could judge these murders worse or more important than the tens of thousands of murders of Salvadorans at the hands of their armed forces. But the case of the four churchwomen has come to be symbolic of the brutalities that mark the daily life of El Salvador in this time. For this reason, the demand to fix responsibility in this case becomes part of a far wider demand --that truth and elementary respect for human life and human rights may be restored and recognized as obligations by those who wield the force of government in El Salvador.

In face of that demand, there is mounting evidence that both the responsible officials of El Salvador and, what is more appalling, officials of the murdered women's own government, are studiously avoiding the measures that might expose the truth. That is the painful accusation emerging from the facts recounted in this report.

Officials of the governments of both the United States and El Salvador periodically cite "progress" in the prosecution of this case as evidence of improvement in El Salvador's human rights record. As signs of progress, they point to various procedural steps that have been taken towards the eventual criminal trial of five low-ranking members of the Salvadoran National Guard. That there has been an investigation of these murders is offered as "proof" that there is improvement and an increased respect for human rights.

These contentions, disingenuous at best, ignore two basic facts. The first is that this case, and one other involving the murder of two U.S. labor advisors, is unique. In a period when perhaps 30,000 civilians including the country's Archbishop have been murdered, many by the government's armed forces, only the cases of the North Americans have been investigated. Secondly, for all the attention that has been paid to this case, the Government of El Salvador remains unwilling or unable to translate its promises into the trial and conviction of the guilty parties. Judged by any reasonable standard, the record of this case reveals a shocking pattern of official indifference, incompetence and ill-will -- attitudes which still prevail. This case stands, more than anything, as testimony to the complete breakdown of the rule of law in El Salvador.

The governments of both El Salvador and the United States have seen fit to ignore evidence indicating that higher military officials participated in ordering the crime and in covering it up. The State Department's recent certification report simply concludes, "As of mid-January 1983, the overwhelming weight of the evidence demonstrates that the accused former guardsmen acted on their own and not pursuant to higher orders."^{*}/ Speculation that no officers were involved adds the weight of the United States government to the strong pressures against ever conducting a thorough investigation in El Salvador.

The certification statement overlooks important testimony. There is now direct evidence in the court's record both that there were higher orders to carry out the killings and that following the murders a cover-up took place. This evidence is being ignored along with considerable evidence which links the Commander of the Army in Chalatenango, Colonel Ricardo Pena Arbaiza, to threats against the Church and two of the murdered women who worked for it in that region.

Rather than providing much needed assistance to the families in pursuing these leads, the United States government continues to obstruct their efforts to obtain pertinent

^{*}/ State Department, "Report on the Situation in El Salvador...", January 21, 1983, at 26.

information which is in the possession of United States and Salvadoran officials. A State Department memorandum of March 1981 stated the continuing policy: the families should be kept informed "but in briefing sessions rather than through submission of actual documents."^{1/} In this way the families can be kept from making an independent assessment of progress, or the lack of progress.

The FBI has also refused to share its records with the families although it has actively participated in the investigation since December, 1980. Beginning almost immediately after the women were killed, FBI agents interviewed witnesses, collected physical evidence and provided guidance and technical assistance to Salvadoran investigators who were either unable or unwilling to pursue an independent investigation. Much of the evidence collected by the FBI, including polygraph tests of the five accused guardsmen and death threats received by parish workers in Chalatenango in December 1980, is in the possession of neither the judge nor the prosecutors working on the case, apparently because they have not bothered to request it. Despite the critical importance of this evidence to the successful prosecution of those responsible for directing and carrying out the murders, the FBI has consistently refused for two years to make even a single page of its information available to the families.

This report examines the current status of the investigation and prosecution of the individuals responsible for the murders of the churchwomen. Its basis is a long course of inquiry, including a visit to El Salvador last month by William Ford, brother of Ita Ford, R. Scott Greathead and Michael Posner of the Lawyers Committee for International Human Rights, and an earlier visit by Mr. Greathead in August 1982.

The latest visit, which took place between January 6-15, 1983, included meetings with a number of Salvadoran government officials, including Dr. Mario Adalberto Rivera, Fiscal General of the Republic, and the presiding judge in the case, Bernardo Rauda Murcia. The delegation also held a series of meetings with various officials of the United States government in San Salvador, including Ambassador Deane Hinton. In addition, the delegation met with a number of private lawyers and experts on the Salvadoran legal system. Finally, the mission members visited and interviewed witnesses at the murder site and in the town of Chalatenango, where Ita Ford and Maura Clarke lived, worked and are now buried.

This is the third report by the Lawyers Committee on the churchwomen's case since September 1981. The account was prepared initially for the families of the four slain women which the Lawyers Committee has represented since December 1980. It is being made public in the hope that by

aggressively pursuing justice in this case, some progress may be made in breaking the cycle of violence that has crippled El Salvador.

Marvin E. Frankel
Chairman

February 1, 1983
New York, New York

* * *

The Lawyers Committee for International Human Rights is a public interest law center based in New York. The Committee works to promote international human rights and refugee law and legal procedures. This report was prepared by Michael Posner and R. Scott Greathead; they were assisted by James Zorn and Leslie Lowe of the Lawyers Committee.

I. RECONSTRUCTION OF THE CRIME
A BRIEF SUMMARY

According to evidence presented to the court in this case, on the night of December 2, 1980, Maura Clarke, Jean Donovan, Ita Ford and Dorothy Kazel were driven down a rural road in the hills of El Salvador, sexually assaulted and then murdered by five members of the Salvadoran National Guard in civilian dress. The women had been kidnapped earlier that evening after their white Toyota van was intercepted by National Guardsmen just down the road from El Salvador's international airport. According to the testimony of one of the guardsmen at the airport, the women were picked up pursuant to "superior orders."^{2/}

Sister Dorothy Kazel, an Ursuline nun, and Jean Donovan, a lay volunteer, had gone to the airport that afternoon to meet a group of colleagues returning from a Maryknoll conference in Nicaragua: among them, Sisters Ita Ford and Maura Clarke, two Maryknolls engaged in pastoral work in the town of Chalatenango, El Salvador. Early in the day, in the city of Chalatenango, a member of the parish staff had received a death threat that included the names of Ita Ford and Maura Clarke. This was the latest in a series of death threats made against members of the Chalatenango parish staff in the period immediately preceding the murders.^{3/}

The bodies of the four women were found on a desolate roadside in the vicinity of Santiago Nonualco early the next day, December 3, by a local landowner who reported his discovery to local authorities. The bodies were summarily buried by members of the security forces in a common grave under the direction of a local Justice of the Peace. Neither local authorities nor security forces reported the deaths despite the fact that the women were identifiable as "blond foreigners." Later that day the women were reported missing by Father Paul Schindler, the parish priest in La Libertad where Sister Kazel and Ms. Donovan worked. After informing the United States Embassy of their disappearance, Father Schindler conducted a search for the churchwomen and found their burned out van on the main road about ten miles northwest of the airport and twenty miles in the opposite direction from where the women's bodies were discovered.

It was not until December 4 that Father Schindler and United States Ambassador Robert White learned, through Church sources, that the bodies of the four churchwomen had been found near Santiago Nonualco.

The local Justice of the Peace who had authorized their informal burial was Juan Santos Ceron. He acknowledged that in the small town of Santiago Nonualco (as in much of El Salvador) it is a common procedure to authorize the burial of

unidentified bodies under the direction of various armed forces. In fact, Santos estimated that he was personally asked to authorize such burials two to three times a week. ^{4/}

II. THE SALVADORAN GOVERNMENT'S INVESTIGATION

Every day we receive new reports of disappearances under tragic circumstances. American citizens in El Salvador have counted among the murdered, among the disappeared. Is it any wonder that much of the world is predisposed to believe the worst of a system which almost never brings to justice either those that perpetrate these acts or those that order them?

U.S. Ambassador Deane Hinton
October 29, 1982

A. Summary of the Early "Investigation"

In the days following the killings, several investigative efforts were announced by the government of El Salvador and widely reported in the world press. It is now apparent that no investigation was actually taking place.

According to his testimony before the Salvadoran court on August 31, 1982, Carlos Eugenio Vides Casanova, Director General of the National Guard, ordered an "investigation" into the killings on December 3, 1980.^{5/} At least three National Guard officers were directed to participate: Captain Armando Carranza, Chief of Section I in the National Guard Headquarters;^{6/} Lieutenant Daniel Mejia, the interim commander of the National Guard Post at the airport;^{7/} and Major Zepeda Velasco.^{8/}

Captain Carranza recently testified that he delegated his duties to a local commander, and that he does not recall the name of the commander he appointed or the result of his "investigation."^{9/} The author of the National Guard's first report on the case, Major Zepeda, has testified that his "brief investigation" went beyond his jurisdiction.^{10/} His report has never been publicly released. According to all accounts, it was a sham.

B. The Special Investigative Commission

Following the visit of a United States Presidential Mission in mid-December 1980 (the Rogers-Bowdler Mission), the Government of El Salvador established a Special Investigative Commission. Acting pursuant to an ill-defined mandate and with limited investigative and remedial powers,^{11/} the Commission was dissolved in late February 1981,^{12/} despite urging by the United States Embassy that it continue and expand its investigation.^{13/} The Commission turned its records over to the Fiscal General's office, which had no authority to act against members of the National Guard until it received an investigative report directly from the National Guard.^{14/} Such a report did not exist and was not prepared until early 1982.^{15/}

On January 21, 1981, Ambassador Robert White informed the State Department that "all the evidence we have... is that the Salvadoran government has made no serious effort to investigate the killings of the murdered women."^{16/}

C. The May 1981 Arrests

On May 9, 1981, six members of the Salvadoran National Guard were arrested for the murders. In April, based on its own investigative efforts, the United States Embassy had provided information implicating the six to Salvadoran authorities. Apparently, the arrests were based almost entirely on that information. Among those arrested were two men, Jose Elias Sanchez Guzman and Adrian Ramirez Palacios, who had been mistakenly identified by the Embassy. Both men remained in prison until December 1981, a period of more than seven months. Following the arrests, Defense Minister Garcia assured the Embassy that his government would pursue the case even though it was "a painful and dangerous matter for the armed forces."^{17/}

Despite these assurances, for seven months, from May until December 1981, little, if anything, was done in connection with the case. While the State Department continued to express publicly its satisfaction with the progress in the case, internal Embassy reports told a different story:

- In an August 1981 cable to the State Department in Washington, the Embassy warned that an unidentified but presumably reliable source had told them, "If the six can keep a straight face before the judge and not let on that they were involved, they still stand a chance of getting away with the crime." 18/
- A September memo from the Embassy notes, "reading the [National Guard's investigatory] documents provoked several questions which we think should have occurred to an investigator whose real aim was to determine who committed the crimes." The memo concluded, "if convictions are to be obtained... a U.S. Government professional investigator, or investigative team, possibly from the FBI" should be sent to El Salvador. 19/

In December, 1981, largely in response to international pressure, the National Guard finally undertook a limited investigation of the case. It was conducted by Major Adolpho Medrano of the National Guard who submitted his report to the court on February 10, 1982. Three days later, Presiding Judge Rauda Murcia in Zacatecoluca initiated a civil prosecution.

D. The Case Before Judge Rauda

I have concluded that it is not impossible that these fellows will be found guilty in a civilian court for murder, but it is not probable in my judgment.

U.S. Ambassador Deane Hinton
August 28, 1981

Obtaining a murder conviction in El Salvador is extremely difficult; if the accused is a member of the armed forces, it is unprecedented and may very well be impossible. In order to prosecute a member of the armed forces who has committed a criminal act against a civilian, the security forces themselves must bring the case to civilian authorities.^{20/} In practice this is a rare occurrence. Yet because of international pressure in the case of the churchwomen, the system was forced to take this extraordinary step. The National Guard's December report provided the basis for taking the case to the sumario or investigative stage of court proceedings.

From February until November 1982, Judge Rauda re-examined the witnesses who had been interviewed by the National Guard. He did not ask about higher orders, because the National Guard's investigation did not extend to higher involvement; its report only accused five low ranking guardsmen of the crime. Under Salvadoran criminal procedures, it was the National Guard's responsibility to make an inquiry concerning superior orders and provide the judge with the information, and this was never done.^{21/}

Judge Rauda did interview the author of the National Guard's report, Major Medrano, who testified that although he had conducted all of the interviews in connection with this investigation, he did not remember any of the testimony. In fact, Medrano stated that he could not give any summary or details concerning any aspect of the investigation.^{22/}

E. Current Status of the Case

Since the July certification, there have been significant developments in the investigation and prosecution of the case of the four American churchwomen murdered in El Salvador in December 1980.

State Department Certification Report
January 21, 1983

On November 15, 1982, Judge Rauda completed his investigation and acted to elevate the case to the plenario^{23/} or trial stage. Because the five defendants were unrepresented by legal counsel, Judge Rauda appointed three lawyers to defend them. The defense immediately appealed the judge's decision to raise the case to plenary, arguing that there is insufficient evidence in the record to bring the five men to trial.^{24/} Since Judge Rauda had failed to notify the defense lawyers in writing of their appointment, the appellate court rejected the appeal sua sponte because of

this technical defect, delaying the proceedings for some four to six weeks.

The appeal was recently reinstated and, if it is denied, the case will be elevated to the plenary stage. During the first fifteen days of the plenario, all evidence that has now been collected must be formally submitted into the record by the prosecutors. At that point, a jury is selected and the parties prepare to present the case to the jury (vista publica).

According to Fiscal General Mario Rivera, after all of the evidence has been introduced, it is likely to be two and a half to three months before the case is finally presented to the jury (roughly mid-May to early June^{25/}). Judging from past experience and the present lack of preparation on the part of his office, this estimate is, at best, optimistic.

F. The Role of the Fiscal General's Office

Successful prosecution depends on the efforts of the prosecutors. Currently there are four people in the Fiscal General's office assigned to this case. According to Dr. Rivera, he has given this assignment to the best lawyers in the office.

It appears from recent interviews with Dr. Rivera and his staff that the Fiscal General's office is uninterested and shockingly unprepared for the trial of this case:^{26/}

- i. Despite the fact that this case is now over two years old, the Fiscal General and his staff still have not developed a theory as to the motive for the crime or what defenses are likely, although they concede that "acting on higher orders" could be a defense. No respectable prosecutor would ever proceed to trial without first developing a theory of the case and preparing for likely defenses.
- ii. The Fiscal General's office was unaware of important witness statements that are in the court record. For example, the prosecutors expressed ignorance of the testimony of former guardsman Cesar Valle Espinoza, dated August 9, 1982, which quotes Subsergeant Colindres Aleman as stating on December 2, 1980, that there were "superior orders" to apprehend the women. They were also ignorant of the statement of former National Guard Sergeant Dagoberto Martinez, taken by the FBI in Los Angeles, California, which establishes the existence of a cover-up of the crime as early as December 1980.^{27/} It can only be concluded that the Fiscal General is either incompetent or deliberately ignoring this key evidence, or both.
- iii. Although the Fiscal General does not dispute the likelihood that there was a cover-up by high ranking Salvadoran National Guard officials, he does not regard it as a "serious crime" and has no intention of prosecuting it. A

cover-up of the crime would constitute a violation of Section 470 of the Salvadoran Penal Code, punishable by six months to six years imprisonment.

- iv. The Fiscal General has failed to seek from the FBI the evidence it collected of the death threats against Ita Ford and Maura Clarke, including witness statements taken shortly after the murders and copies of the written threats. It can only be concluded that the Fiscal General is deliberately ignoring this and other evidence of the involvement of higher officials because of incompetence, fear and/or political reasons.
- v. Finally, as evidenced by the recent appellate history of this case, the Fiscal General has allowed technical errors by the Judge to unnecessarily delay the progress of the prosecution.

III. THE QUESTION OF HIGHER INVOLVEMENT

As of mid-January 1983, the overwhelming weight of the evidence demonstrates that the accused former guardsmen acted on their own and not pursuant to higher orders.

State Department Certification Report
January 21, 1983

There has been nothing but a footdragging on the part of [the Salvadoran] government. And this will continue, because no murders are investigated. And the reason is that if you investigate the murder of the American churchwomen, you are going to find that it was not the responsibility of four or six or eight enlisted men, but that it involved orders from responsible officers.

Former U.S. Ambassador Robert White
July 23, 1981

To this day, there has been no meaningful investigation to determine whether the five accused guardsmen were acting pursuant to higher orders. In our meeting with him, Ambassador Hinton did not dispute this, but declined to take any steps to see that such an investigation was undertaken.^{28/} In our view, both Salvadoran and United States authorities are purposefully ignoring several significant evidentiary leads that point to the involvement of higher authorities.

A. Evidence of Higher Orders

On August 9, 1982 a former member of the Salvadoran National Guard, Julio Cesar Valle Espinoza, testified that on the evening of December 2, 1980, Subsergeant Colindres Aleman told him that the five accused were acting under "superior orders" to detain the vehicle carrying the four women.^{29/} While in El Salvador, we learned that neither Judge Rauda nor the prosecutors in the Fiscal General's office have ever re-examined Valle or the two other guardsmen who, according to Valle, witnessed this statement, and that neither intends to do so.^{30/} Nonetheless, Valle's testimony underscores a critical issue: Why did five low ranking National Guardsmen leave their posts at the National Airport to follow and apprehend four North American women unless they were ordered to do so?

B. Death Threats and the Conflict Between the Church and the Army in Chalatenango

At present, the case against the five guardsmen is being prosecuted without any consideration of motive. In August, 1982, one of the prosecutors working in the case opined that the motive for the killing was robbery.^{31/} In January 1983, Fiscal General Rivera refused to speculate on the motive, though he acknowledged that the killings may have

been political.^{32/} Despite the reluctance of the Fiscal General to confront this issue, the circumstances of the crime inescapably suggest a political motive rooted in the increased tension between the Church and the army in Chalatenango Province, the area where Ita Ford and Maura Clarke were working. Our discussions with people who were in the area reveal that in the months preceding the killing these tensions had increased sharply, culminating in several death threats against churchworkers in the area.

The army commander in Chalatenango during this period was Colonel Ricardo Pena Arbaiza. From his headquarters across the street from the Church, Colonel Pena was openly hostile to several principal church members whom he considered subversive. The tension between Pena Arbaiza and the Church began to intensify in the spring of 1980, as fighting escalated, and in the aftermath of the murder of Archbishop Oscar Romero in March 1980.

It was during this time that the three members of the Maryknoll Order came to Chalatenango: Ita Ford, who arrived shortly after Archbishop Romero was killed; Carol Plette, who worked with Ita until she died in an automobile accident in August 1980; and Maura Clarke, who took Carol's place. These women provided much needed assistance to the Church in its efforts to aid the growing refugee population

in Chalatenango. But their presence and effectiveness in the community heightened existing tensions with the army. Colonel Pena Arbaiza's own evangelical religious beliefs only added to the tensions.

Beginning in the summer of 1980, there were several incidents of harassment and intimidation against church-workers:

- In the late summer of 1980, Pena Arbaiza learned of two young boys who had purportedly been shot by the guerrillas. He claimed that they told him of contacts between the Church and leftist insurgents in the area. In September or October of 1980 he called several representatives of the Church into his office to berate them about these "subversive" activities.
- On several occasions during this period, Colonel Pena travelled to San Salvador where he expressed similar concerns to leaders of El Salvador's Armed Forces. In November of 1980, a ten year old boy from Chalatenango was brought to San Salvador for a meeting of high government officials to testify about the Church's contacts with the guerrillas. According to several reports of this meeting, Minister of Defense Garcia specifically criticized the activities of Church leaders in Chalatenango.^{33/}
- In the fall of 1980, for the first time, members of the army began coming into the Church building. They came initially in civilian clothes. Soon they began coming in their army uniforms. By late fall, the army had virtually taken control of the Church. Church officials were reduced to ask-

ing the Army's permission before ringing the Church bells.

- In early November of 1980, a sign appeared on the parish door in the city of Chalatenango. The sign showed a knife and a head with blood running down its side, and contained a death threat directed against the men and women who were working with the Church in Chalatenango.
- About the same time, Ita Ford and Maura Clarke moved into the parish house in Chalatenango because they felt more secure there. In November 1980, Ita Ford told an interviewer that "The Colonel of the local regiment [Pena Arbaiza] said to me the other day that the Church is indirectly subversive because it's on the side of the weak."
- On December 2, 1980, the day the women were murdered, a priest in Chalatenango received an anonymous threatening letter. That night another member of the Church staff was shown a list and told that the people on it were going to be killed. The list contained the names of everyone on the parish staff (except the cook), including Ita Ford and Maura Clarke. The unidentified man told the parish worker that the killings would begin that night.
- On December 3, 1980, before the bodies had been located, concerned Church officials went to see Colonel Pena Arbaiza to inquire into the whereabouts of Ita Ford and Maura Clarke. While Colonel Pena said he had no information, he again berated them about what he considered the subversive activities of the church. He showed his visitors hand grenades, blindfolds and "subversive" literature, all of which, he alleged, had been taken from members of the Church.

In late December of 1980, a few weeks after the bodies of the four women were discovered, Colonel Pena was transferred out of Chalatenango. He is still an active member of the Salvadoran army, now serving as a military attache in Tegucigalpa, Honduras.

Colonel Pena's potential involvement in this case appears never to have been investigated by Salvadoran authorities. Apparently in response to questions raised by the families, he was briefly interviewed by the FBI in Honduras in late 1982. The FBI continues to withhold from the families all information about Colonel Pena, including the transcript of that interview.

C. The Question of Cover-up

On the question of post-killing cover-up, there is uncontroverted evidence in the court's record that during the month of December 1980, Subsergeant Colindres Aleman confessed his crime to a superior, Sergeant Dagoberto Martinez^{34/} Martinez.

Martinez gave a sworn statement to the FBI in February, 1982, in Los Angeles. According to this statement, the confession occurred at a special meeting of National Guard commanders called by the Director General of the National Guard, Carlos Eugenio Vides Casanova, in December 1980.^{35/} Vides Casanova told the group that there was reason

to believe that National Guard personnel were involved in the murder of the four churchwomen, and asked to be informed of any information about the killings. Following that meeting Colindres Aleman confessed to Sergeant Martinez that he was responsible for the crime. Martinez states that he told Colindres Aleman to inform Director General Vides Casanova, but not to disclose the crime publicly and damage the reputation of the National Guard. Sergeant Martinez resigned from the National Guard on December 31, 1980, and shortly thereafter moved to the United States.

Martinez' statement strongly suggests that he, and possibly also Director General Vides Casanova, are guilty of a cover-up of the crime in violation of Section 470 of the Salvadoran Penal Code. Martinez' testimony is also important evidence of the guilt of Colindres Aleman, evidence that any competent prosecutor would pursue. Nonetheless, Fiscal General Rivera and his staff professed ignorance of it, and when a copy from the court records was shown to them, expressed no interest in examining Martinez or seeking his extradition to El Salvador.^{36/}

On January 11, 1983, William Ford presented a declaration to Judge Rauda in Zacatecoluca which raised these concerns about higher involvement. This declaration, which is now part of the court's record, is attached to this report. (See Appendix A).

IV. THE ROLE OF THE UNITED STATES GOVERNMENT

A. The State Department

In its July 1982 certification report, the State Department asserted that "substantial progress" had been made in this case and estimated that the trial would take place in the fall of 1982.^{32/} Six months later, the State Department's certification report notes that "Since the July certification, there have been significant developments in the investigation and prosecution of the case of the four American churchwomen."^{*/}

Despite these and numerous other assurances of progress, a date for the public trial has yet to be determined. Moreover, while the State Department has stressed that progress is being made, it has endorsed the Salvadoran government's refusal to explore questions pertaining to broader involvement in the killings. And the Department continues to effectively block efforts by the families to obtain information about the case which is relevant to these concerns.

^{*/} State Department, "Report on the Situation in El Salvador...", January 21, 1983, at 25.

B. Predictions of a Trial Date

Since the certification law was enacted, the Reagan Administration has sought to demonstrate that "good faith efforts" have been made to achieve progress in this case. Accordingly, both U.S. and Salvadoran officials have been highly optimistic in their public statements as to when the case will come to trial:

- Two days before the January 1982 certification deadline, General Garcia predicted that the case would go to trial "within a very few days." 38/
- Congressional representatives on a trip to El Salvador were told in the spring of 1982 that "the trial would go forward at the end of June." 39/
- At the July 1982 hearings on certification, the Administration maintained that Judge Rauda "feels sufficient evidence now exists to order the case to trial, and that he will set a trial date in the near future." 40/
- In October, the State Department's estimate of the "near future" was November 1982. 41/

The State Department's January 1983 Certification Report declines to make new predictions. Instead, the report notes only that, "under the Salvadoran Code of Criminal Procedure, there are several judicial steps ahead." 42/

The fact remains that no date for the public stage of the trial has been scheduled, and it is almost impossible

to predict when (or if) it will occur. Although Judge Rauda ordered that the investigative phase of the proceedings be closed last November 15, the case has not moved forward. The case is now stayed pending an appellate court decision on a defense challenge to the sufficiency of the evidence.

C. Good Faith Efforts:
The State Department's View

The State Department equates "good faith efforts" with the scheduling of a trial. Yet the Department also acknowledges that under the Salvadoran legal system "the trial itself tends to be much less of an event than [in the United States]" because it is "based largely on documentary evidence, and the really critical thing is the accumulation of the documents beforehand."^{43/}

A complete copy of the file from the judicial investigation has never been made available to either the State Department or to the families and their legal advisors. However, as noted earlier, the documents which are available reveal that Julio Cesar Valle Espinoza, one of the guardsmen who assisted in setting up the roadblock on December 2, testified on August 9, 1982 that Colindres Aleman told him that "by superior order" they were to detain a vehicle carrying women who had just arrived from Nicaragua.

Despite this declaration the State Department continues to maintain that "no evidence has come to light which would give credibility to allegations of higher involvement^{44/}" It dismisses Valle's declaration because he did not know if such orders actually were given.^{45/} In fact, the State Department's recent certification report does not mention Valle's testimony.

State Department authorities have from the outset been unwilling to consider seriously any evidence suggesting broader involvement by the security forces. They rely almost exclusively on polygraph evidence obtained by the FBI in early 1982, which they assert "indicates that there was no higher involvement."^{46/}

Whether or not this reliance is well placed is impossible to determine. The State Department does not know what questions were put to the witnesses tested since, according to the FBI, the examiner did not write them down.^{47/} In addition, the polygraph evidence on which this opinion is based has not been made available to the families or their legal advisors. In fact, it has never even been given to the Fiscal General's office which is prosecuting the case, or to Judge Rauda. Apparently the first time Judge Rauda heard about the polygraph tests was when we met with him in January.^{48/} According to Embassy officials, only the FBI in Washington has copies of the tests.^{49/}

In December 1980, before even the most preliminary investigative efforts had been completed, Salvadoran officials "denied flatly that the authorities had anything to do with the murders."^{50/} National Guard Director General Vides Casanova told the Embassy that "the murders of the nuns could not have been the work of the government because they were so obviously counter-productive."^{51/}

While continuing to give public credence to these and similar statements, the State Department's internal communications have identified circumstantial evidence indicating coordination and planning of the crime. The testimony of National Guardsman Perez Nieto is one example. In December 1981, Perez Nieto testified that on the afternoon of December 2, 1980, he called Colindres Aleman from the airport to report the presence of two "subversive women."^{52/} Yet the basis for his suspicions has never been fully explored.

Perez Nieto's testimony raises additional questions. For reasons that were not revealed, a State Department cable dated December 29, 1981, characterized Perez Nieto's testimony as "incomplete, evasive and uncooperative."^{53/} Considering these reservations, it is interesting that in a letter to William Ford in March 1982, Ambassador Hinton relied on that testimony to demonstrate that there was no higher involvement. In his letter, Ambassador Hinton noted:

The National Guardsman at the airport who initially spotted the churchwomen [Perez Nieto] was thoroughly interrogated and repeatedly denied that anyone superior to him had ordered him to watch out for the churchwomen. 54/ [Emphasis added.]

The State Department continues to be fully aware of these and other deficiencies in the record and the inadequacy of the investigation itself. A State Department memo of September 1981, given to the families only after substantial deletions were made, reports:

Reading the documents provoked several questions which we think should have occurred to an investigator whose real aim was to determine who committed the crime. We cite some of those questions: [text deleted] We wonder why those questions (and others that may not come to us) were not addressed. 55/ [Emphasis added.]

None of these concerns were revealed to the families when they met with Ambassador Hinton in Washington on September 30, 1981. Instead, he told them, with the assurance of one fully informed, that the investigation should be limited to the six guardsmen in detention "who were acting on their own."^{56/}

D. Refusal to Share Information

The State Department continues to resist efforts by the families to obtain documents relating to this case which

are in its possession, while adhering to a policy of providing "everything possible" to the families "but in briefing sessions rather than through submission of actual documents."^{57/} As a result, it has been extremely difficult for the families to make a complete and independent assessment of the progress being made in the case.

The families have pursued every available means of obtaining information concerning the investigation and prosecution of those responsible for the murders of their relatives. In June of 1981, acting on behalf of the four families, the Lawyers Committee filed a Freedom of Information request with the State Department. On behalf of the families, the Lawyers Committee has brought suit in Federal Court challenging the State Department's refusal to release these documents. The action is currently pending in the Southern District of New York. Curiously, in a letter to Senator Strom Thurmond dated May 15, 1982, the State Department wrote:

We have offered to provide the family members all cable traffic between the State Department and the U.S. Embassy in El Salvador that contains evidence, or potential evidence, about the crime. 58/

The families are still waiting to receive this cable traffic.

On January 14, 1983, William Ford wrote to the Fiscal General of El Salvador requesting his assistance in

obtaining material that is now in the possession of the United States Embassy in San Salvador. Mr. Ford's letter is attached to this report (See Appendix B.)

E. The FBI

From the outset, the United States Federal Bureau of Investigation has played a critical role in the development of this case. Initially the FBI was requested to provide technical assistance to the Special Investigative Commission established by President Duarte on December 8, 1980 and to make "investigative suggestions." An FBI agent was dispatched to El Salvador on December 9 and was later joined by a team of technicians.^{59/}

Although the FBI stresses that it acted at the behest of the Salvadoran government and in an advisory capacity, in fact it played a significant part in directing the initial investigation. On April 16, 1981, Assistant Secretary of State Enders urged the government to dispatch "a special agent from FBI headquarters to review the evidence in order to recommend to the Salvadoran government whether to pursue an investigation" of the six guardsmen then under detention at National Guard headquarters.^{60/} These suspects were officially placed under arrest on May 9, 1981.

Following their arrest, Embassy officials continued to urge the FBI to assist the investigation. One official

stressed in September 1981 that "if convictions are to be obtained" it is essential that "a U.S. government professional investigator or investigative team, possibly the FBI" be sent to work on the case.^{61/}

There is no question that the FBI's role has been significant. The FBI:

- advised the Salvadoran government on how to comb the area where the bodies were found to uncover shell casings and spent bullets which had escaped detection by Salvadoran investigators;
- conducted a ballistics analysis which later revealed that these bullets had been fired from a G-3 rifle, the weapon used by Salvadoran security forces;
- obtained fingerprint samples and analyzed them, and conducted and analyzed polygraph tests of the six suspects arrested in the spring of 1981.

FBI agents have also conducted interviews with a number of key witnesses, among them Sergeant Martinez Martinez in California in February 1982 and Colonel Pena Arbaiza in Honduras in late 1982.

Initially invited to assure the Salvadorans that they have "a full range of technical and professional support,"^{62/} the FBI's involvement has also created problems. Most of these difficulties relate to the FBI's uncertain jurisdiction in helping to conduct an investigation in a foreign country. One result is that much of the information

that the FBI has collected has not been given to their Salvadoran counterparts and its value is thereby lost. FBI polygraph tests, for example, are neither in the hands of the prosecutors nor the court.^{63/}

In some instances where the FBI, not Salvadoran investigators, have interviewed key witnesses, Salvadoran prosecutors have either been denied access to or simply are not interested in seeing these reports. For example, the results of the FBI's December 1980 investigation of death threats against church officials in Chalatenango are unknown to the prosecutors.^{64/} In a letter dated January 14, 1983, William Ford requested Fiscal General Rivera to "obtain, promptly, all evidence in the possession of the FBI about the case." (See Appendix B.)

Much of the physical evidence which the FBI collected may be inadmissible in the case. The Fiscal General's office now says that under Salvadoran law only evidence obtained under the supervision of a judge within the territorial limits of El Salvador may be introduced at trial.^{65/} Consequently, the results of ballistics tests, fingerprint analyses and other technical studies from the FBI's laboratory in Washington may be excluded unless such tests can be reproduced in El Salvador.^{66/} -- which, Salvadoran legal experts say, may be impossible.

At this writing, the FBI continues to refuse to make available to the families the following information:

- the ballistics test reports on the bullets found at the gravesite and on the weapons test fired by the FBI;
- the names of all security force personnel and other persons fingerprinted by the FBI and the reports on the comparison of these prints with the 12 or 13 sets of fingerprints lifted from the churchwomen's van;
- the names of all persons to whom the FBI administered polygraph tests, the questions asked during each test and the polygraph itself;
- the laboratory report on a "red splotch" lifted from the van;
- the names of all persons interviewed by the FBI in December of 1980 and thereafter, in El Salvador, Honduras and the United States, and a transcript of each interview;
- any other reports or analyses pertaining to the evidence gathered by the FBI in its investigations.
- The whereabouts of former National Guard Sergeant Dagoberto Martinez Martinez whom the FBI interviewed in Los Angeles in February, 1982.

In a Freedom of Information Act lawsuit filed in New York by the Lawyers Committee, the FBI has acknowledged that, as of March 1982, it had 180 documents, comprising approximately 600 pages, which are relevant to this case. None of these documents have been made available to the families.

SUMMARY AND CONCLUSIONS

An examination of the available information pertaining to the killing of the four United States Churchwomen, and to the subsequent investigation of these crimes, supports the following observations and conclusions:

1. From the outset Salvadoran authorities assigned to handle this case have failed to conduct a proper investigation. Twenty-six months after the killings took place, basic aspects of the case have never been investigated.

2. Lawyers in the Salvadoran Fiscal General's office, which is prosecuting the case, are alarmingly uninterested and wholly unprepared for trial. Specifically the Fiscal General and his staff:

- a. Have still not developed a theory as to the motive for the crime or what defenses are likely, although they concede that "acting on higher orders" could be a defense;
- b. Continue to ignore existing evidence that there were orders from superiors to apprehend the women. They have failed to seek from the FBI relevant evidence pertaining to the death threats and other evidence of the involvement of higher officials. It can only be concluded that they are either incompetent or deliberately ignoring this key evidence, or both;
- c. Have no intention of prosecuting higher ranking members of the

Salvadoran armed forces for a cover-up because they do not regard it as a "serious crime." The Fiscal General does not dispute the likelihood that such a cover-up took place.

3. There has been no meaningful investigation to determine whether the five accused guardsmen were acting pursuant to higher orders. In our view both Salvadoran and United States authorities are purposefully ignoring significant evidentiary leads that point to the involvement of higher authorities:

- a. There is now evidence in the court's record that, on the night of the killing, Subsergeant Colindres Aleman told another member of the National Guard that the five accused were acting under "superior orders" to detain the four women.
- b. The circumstances of the crime inescapably suggest a political motive rooted in the increased tension between the Church and the Army in Chalatenango where two of the women were working. In the months preceding the killing these tensions had escalated sharply, culminating in several death threats against church-workers in the area.
- c. On several occasions during this period the Army commander in Chalatenango, Colonel Ricardo Pena Arbaiza, accused members of the Church of subversive activities. He also made these accusations to leaders of El Salvador's armed forces.

- d. In early November, 1980, a sign appeared on the parish door in Chala-tenango which showed a knife and a head with blood running down its side. It contained a death threat against the men and women who were working with the Church.
- e. On December 2, 1980, the day the women were murdered, a death threat was received by the Church which contained a list of names of people to be killed. The list contained the names of virtually everyone on the parish staff, including Ita Ford and Maura Clarke. An unidentified man told a parish worker that the killings would begin that night.
- f. On December 3, 1980, Church officials visited Colonel Pena Arbuiza. While he claimed to have no information on the whereabouts of Ita Ford and Maura Clarke, he repeated the charge that the Church was engaged in subversive activities. He showed his visitors hand-grenades, blindfolds and "subversive" literature, all of which, he alleged, had been taken from members of the Church.
- g. Several weeks later, Colonel Pena Arbaiza was transferred out of Chala-tenango. He is still an active member of the Salvadoran army, now serving as a military attache in Tegucigalpa, Honduras. These death threats, and Colonel Pena Arbaiza's potential involvement have never been seriously investigated.

There also is evidence in the court's records that Subsergeant Colindres Aleman confessed his involvement in the killings to at least one superior officer, Sergeant Dagoberto Martinez in December 1980. Sergeant

Martinez retired from the National Guard in December 1980 and moved to Los Angeles where he was interviewed by the FBI in February 1982. The Fiscal General has said that he has no interest in further examining Sergeant Martinez or in considering his possible involvement in a cover-up.

4. Despite these deficiencies in the investigation and prosecution, the United States Department of State continues to cite "significant developments" and progress in the case. The fact remains that no date has been set for the public stage of the trial, and it is virtually impossible to predict when (or if) it will occur. It is now clear that such a trial is still months away.

5. The State Department continues to reject evidence indicating that higher military officials ordered the crime and covered it up. The recent certification report simply concludes that "the overwhelming weight of the evidence demonstrates" that the five guardsmen acted on their own. Such speculation endorses the Salvadoran government's refusal to explore this issue, and thus adds the weight of the United States government to the already strong pressures against conducting a thorough investigation in El Salvador.

6. The State Department continues to resist efforts by the families to obtain documents in its possession relating to this case. Since June 1981, acting on behalf of

the four families, the Lawyers Committee has sought to obtain this information through the Freedom of Information Act. A lawsuit filed in June 1982 is now pending in Federal Court in the Southern District of New York.

7. Since December 1980, FBI agents have interviewed witnesses, collected physical evidence and provided guidance and technical assistance to Salvadoran investigators. Neither the prosecutors nor the judge in El Salvador are in possession of this information despite its critical importance to a successful prosecution. On January 14, 1983, William Ford formally requested the Fiscal General to obtain this material from the FBI. (See Appendix B).

8. For two years the FBI has refused to make this information available to the families, despite both formal and informal requests. In a Freedom of Information Act lawsuit filed in New York by the Lawyers Committee, the FBI has acknowledged that, as of March 1982, it had 180 documents, comprising approximately 600 pages, which are relevant to this case. None of these documents have been made available to the families.

APPENDIX ADeclaration of the Injured Person

I, William P. Ford, make the following declaration under penalty of perjury:

1. I am a citizen of the United States of America and a lawyer admitted to the Bar of the State of New York. I am the natural brother of Ita Ford who, with Maura Clarke, Dorothy Kassel and Jean Donovan, was assaulted and murdered on December 2, 1980, in the Republic of El Salvador. I make this statement pursuant to Articles 71 and 72 of the Salvadoran Code of Penal Procedure at the request of the Fiscal General and to assist the Court in bringing to justice all the individuals who are responsible for this crime. I make this statement on the basis of information and belief and based upon sworn statements which have been entered into the record of this proceeding.

2. I have suffered injury as a result of the actions of the individuals who directed and carried out the assault and murder of my sister, Ita Ford, a Maryknoll nun, and her three companions on December 2, 1980, in the vicinity of Zacatecoluca in the Republic of El Salvador. I was informed of the murder of my sister on December 4, 1980 by Melinda Moper of the Maryknoll Order. Thereafter the United States Department of State confirmed to me that based on autopsies and other physical evidence, it had been concluded that my sister and her companions had been physically assaulted and shot to death by unknown assailants. Clear and convincing evidence of the culpability of the five National Guardsmen accused

of my sister's assault and murder has been entered into the record of this case. Prior to December 2, 1980, my sister and her co-workers in the Parish of Chalatenango had received death threats.

3. The injury and pain that I and the families have suffered from this crime can never be fully redressed. However, we have the right to expect that all the individuals who are responsible for this crime or for covering it up will be brought to justice. It is for this reason that I wish to bring to the attention of the court and the Fiscal General certain statements in the record and other facts which indicate that the five defendants were acting pursuant to superior orders or at the direction of others who may share responsibility for the crime, and that certain officials within the National Guard had knowledge of the crime and assisted the five defendants, and possibly others, in eluding criminal prosecution in violation of Article 470 of the Salvadoran Penal Code.

- 1) Evidence that the five accused guardsmen were acting pursuant to superior orders or at the direction of others.

4. According to the sworn statement of former guardsman Cesar Valle Espinoza, Subsergente Colindres Aleman stated to him and two other guardsmen on the evening of December 2, 1980, that the five accused were acting under superior orders to detain the vehicle carrying the four women. The statement of Cesar Valle Espinoza was made on August 9, 1982, and is part of the record of this proceeding.

5. Whether or not the five accused were acting pursuant

to superior orders is an extremely important question which has not been fully investigated. For example, to the best of my knowledge, there has been no effort to question each of the superior officers of subsergente Colindres Aleman with respect to this question.

6. The immediate superior of Colindres Aleman was Sargento Dagoberto Martinez Martinez, who retired from the National Guard immediately following the crime and currently resides in Los Angeles, California. He has never been questioned concerning his knowledge of superior orders, his whereabouts on December 2, 1980, or whether he had any conversations with Colindres Aleman on that date. Subteniente Daniel Mejia Rivas was, at the time of the crime, the commander of the district that includes the International Airport. Although in his sworn statement, which was made August 23, 1982, he denies knowledge of any order to apprehend the women, he apparently was not asked about his whereabouts on December 2, 1980, whether he had any conversations with Colindres Aleman on that date, or whether he received any reports concerning "suspicious" persons arriving at the airport on that date.

7. Mejia Rivas testified that any order authorizing a National Guard detachment to operate outside the grounds of the airport area, as occurred in this case, would have to come from National Guard Headquarters in San Salvador. Nevertheless, no higher officer has ever been questioned as to whether any such

order was issued. Captain Oscar Armando Carranza, who worked at the time of the crime in the General Directorate of the National Guard as chief of Section I, gave a sworn statement in this case on June 24, 1982. He was not asked any questions concerning his knowledge of such orders. Similarly, the Director General of the National Guard, Carlos Eugenio Vides Casanova, who gave a sworn statement on August 31, 1982, was not asked any questions concerning his knowledge of such orders.

8. Finally, neither of the two National Guardsmen who were present when Colindres Aleman allegedly stated to Cesar Valle Espinosa that he was acting pursuant to higher orders, have ever been asked any questions concerning this statement. According to the sworn statement of Valle Espinosa, these individuals are Jose Elias Sanchez and Adrian Ramirez Palacios.

9. Nor has there been any investigation of three death threats made against two of the women, Ita Ford and Maura Clarke, and members of the parish staff in Chalatenango where the two nuns worked to aid the local population. I am informed that Colonel Ricardo Pena Arbaiza, the Army commander in Chalatenango, was aware of these threats. But he has never been questioned about his knowledge of these threats in this proceeding.

ii) Evidence that officials of the National Guard had knowledge of the crime as early as December 1980 and may have assisted the accused in eluding prosecution.

10. On February 10, 1982, Dagoberto Martinez Martinez, a former member of the National Guard and a superior of

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Subsargento Colindres Aleman, made a sworn statement to agents of the United States Federal Bureau of Investigation in Los Angeles, California, which has been entered into the record of this proceeding. Dagoberto Martinez Martinez stated that during the month of December, 1980, Subsargento Colindres Aleman confessed to him that he was responsible for the crime. Martinez stated that he told Colindres Aleman to inform the Director General of the National Guard, Carlos Eugenio Vides Casanova, but that he should not make it public or damage the reputation of the National Guard.

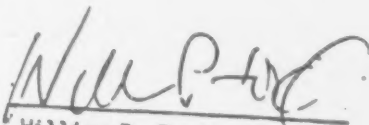
11. According to sworn statements in the record of this proceeding, shortly following the crime, each of the five accused was transferred out of the National Guard detachment at the International Airport to various parts of the country. Dagoberto Martinez Martinez retired from the National Guard on December 31, 1980, and five months later emigrated to the United States. The accused were not detained or charged with any crime until in or about May, 1981, some six months following the commission of the crime.

12. These facts strongly suggest that certain officials of the National Guard had knowledge of the crime and assisted the accused in avoiding prosecution, which is a violation of Article 470 of the Salvadoran Penal Code. Among those who may be guilty of this crime are Dagoberto Martinez Martinez and Director General Vides Casanova.

Conclusion

13. Pursuant to Articles 299, 300, 305 and 306 of the Code of Penal Procedure, I request on my behalf and on behalf of the families of the four murdered women that this Court and the Fiscal General take all steps necessary to ensure that there is a full and complete investigation of these matters. A full investigation should include the interrogation or reinterrogation of the witnesses identified above concerning the culpability of persons in addition to the five accused and the cover-up of the crime.

14. It is impossible to express the anguish that this crime has inflicted upon the families of these four women. Our lives will never be the same. There can be no peace for the families unless and until we are assured that all those responsible for this terrible crime have been brought to justice.


William P. Ford

January 11, 1983

APPENDIX B

William P. Ford
120 Wall Street
New York, New York 10005
Tel: 212-269-4900
January 14, 1983

Doctor

Mario Adalberto Rivera
Fiscal General de la República de El Salvador
San Salvador, El Salvador, C.A.

Dear Doctor Rivera:

I am the brother of Sister Ita Ford, M.M., a member of the Maryknoll Order, who with three other American churchwomen, was assaulted and murdered in El Salvador on December 2, 1980.

R. Scott Greathead, Michael Posner and I, accompanied by William Brownfield of the American Embassy met with you on January 12, 1983 to discuss the status of the criminal prosecution of the five men in custody, who are accused of the crime. At the meeting, I requested information about the case and you asked me to put the requests in writing.

On behalf of myself and the families of the four murdered women, I make the following requests for information and documents about the criminal case pending against the five former members of the National Guard, who are charged with the murders.

1. Evidence collected by the U.S. Federal Bureau of Investigation (F.B.I.).

We understand that the F.B.I. has investigated the crime, or perhaps assisted the salvadorean authorities to investigate the crime. We also understand that that the F.B.I. and the U.S. Embassy have in their files in Washington and in San Salvador evidence about the case, including ballistics tests, fingerprint samples, polygraph tests, witness statements, threatening communications sent to the murdered women and other information.

We request that the Fiscal General obtain, promptly, all evidence in the possession of the F.B.I. about the case, so that an evaluation can be made, before trial, whether the evidence can be used at trial. We understand that this has not yet been done.

We also request that copies of all the evidence sent by the F.B.I. to the Fiscal General be Given to the families for the evaluation and use of their own attorneys.

2. Documents and Information about the case, given to, or shown to the American Embassy by the Fiscal General.
The American Embassy has refused to give the families access to documents and information about the case, because the Embassy says it received the documents and information in confidence from the Government of El Salvador. We request that the Government of El Salvador permit the Embassy to release such documents and information to the families.

The families need this information to decide on their next course of action in the case. The families believe that they are entitled to this information about the murder of their sisters.

3. Personal Property of Ita Ford and Maura Clark.
After the murder of the four women, the forces of the Army, probably from the Chalatenango garrison, occupied the house where Ita Ford and Maura Clark lived and worked and stole the personal property of Ita and Maura Clark. We request the immediate return of all personal property belonging to Ita Ford and Maura Clark.

We ask for a prompt reply to this letter. We also enclose a copy of this letter in Spanish.

Thank you.

Respectfully Yours,

William P. Ford

WPF/maf

cc: Ambassador Hinton

FOOTNOTES

- 1/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, March 20, 1981.
- 2/ Declaration of Julio Cesar Valle Espinoza, August 9, 1982.
- 3/ See following text at pp. 20-24.
- 4/ "Report to the President of Special Mission to El Salvador," (hereinafter the "Rogers-Bowdler Report"), December 12, 1980.
- 5/ Declaration of General Eugenio Vides Casanova, August 31, 1982.
- 6/ Declaration of Captain Oscar Armando Carranza, June 24, 1982.
- 7/ Declaration of Lieutenant Daniel Mejia Rivas, August 23, 1982.
- 8/ Declaration of Major Zepeda Velasco, June 23, 1982.
- 9/ Declaration of Captain Oscar Armando Carranza, June 24, 1982.
- 10/ Declaration of Major Zepeda Velasco, June 23, 1982.
- 11/ The Special Investigative Commission lacked powers of indictment and subpoena and could not act as a law enforcement agency within the meaning of Salvadoran law. See State Department "Chronology of the Investigation Into the Deaths of the American Churchwomen," April 1981; and Salvadoran Code of Penal Procedure, Articles 137-140.
- 12/ "FBI Status Report on the Investigation," April 10, 1981.
- 13/ Cable from U.S. Embassy, San Salvador to State Department, Washington, February 25, 1981.
- 14/ See Salvadoran Code of Penal Procedure, Articles 137-140.
- 15/ See following text at p. 13.

FOOTNOTES
(con't.)

- 16/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, January 21, 1981.
- 17/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, May 21, 1981.
- 18/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, August 12, 1981.
- 19/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, September 18, 1981.
- 20/ See Salvadoran Code of Penal Procedure, Articles 137-140.
- 21/ Meeting between R. Scott Greathead, Michael Posner and William Ford, and Judge Rauda Murcia, January 11, 1983.
- 22/ Declaration of Jose Adolfo Medrano, June 23, 1982.
- 23/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, December 10, 1982.
- 24/ Information on the defense appeals was obtained during various meetings between R. Scott Greathead, Michael Posner and William Ford, and Fiscal General Mario Rivera, Judge Rauda Murcia and U.S. Embassy officials between January 6-15, 1983.
- 25/ Meeting between R. Scott Greathead and Michael Posner, and Fiscal General Mario Rivera, January 8, 1983.
- 26/ Meetings between R. Scott Greathead, Michael Posner and William Ford, and Fiscal General Mario Rivera, January 8 and 12, 1982.
- 27/ See following text at pp. 24-25.
- 28/ Meeting between R. Scott Greathead, Michael Posner and William Ford, and Ambassador Deane Hinton, January 12, 1983.
- 29/ Declaration of Julio Cesar Valle Espinoza, August 9, 1982.
- 30/ Meetings between R. Scott Greathead, Michael Posner and William Ford, and Fiscal General Mario Rivera and Judge Rauda Murcia, January 12 and 11, respectively.

FOOTNOTES
(con't.)

- 31/ Meeting between R. Scott Greathead and Dr. Benjamin Cestoni, Administrative Director of Salvadoral Fiscal General's Office, August 16, 1982.
- 32/ Meeting between R. Scott Greathead, Michael Posner and William Ford and Fiscal General Mario Rivera, January 12, 1983.
- 33/ See, e.g., John Dinges, "New Evidence on Missionaries' Deaths in El Salvador Suggests Official Plot," Pacific News Service, July 3, 1981.
- 34/ Statement of Dagoberto Martinez Martinez, February 10, 1982, taken by the FBI in Los Angeles
- 35/ A recent Embassy cable confirms that such a meeting took place, perhaps on December 9, 1980. Cable from U.S. Embassy, San Salvador to State Department, Washington, January 20, 1983.
- 36/ Meetings between R. Scott Greathead, Michael Posner and William Ford, and Fiscal General Mario Rivera, January 8 and 12, 1983.
- 37/ Department of State "Report on the Situation in El Salvador...", July 27, 1982.
- 38/ "Trial is due for Six Suspects in Salvador slaying of Nuns," The New York Times, January 27, 1982
- 39/ House of Representatives, Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, Presidential Certification on El Salvador (Volume II), June 2, 1982, at 94.
- 40/ Id., at 29.
- 41/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, October 10, 1982 [exact date unknown].
- 42/ Department of State, "Report on the Situation in El Salvador...", January 21, 1983.
- 43/ House of Representatives, Committee on Foreign Affairs, Subcommittee on Inter-American Affairs, Presidential Certification on El Salvador (Volume II), June 2, 1982, at 95.

FOOTNOTES
(con't.)

- 44/ Letter from L. Craig Johnstone, Director, Office of Central American Affairs, Department of State, to Michael Posner of the Lawyers Committee for International Human Rights, November 22, 1982.
- 45/ Id.
- 46/ See, e.g., Letter from Thomas Enders, State Department, to Members of the families, April 20, 1982, and letter from State Department to Senator Strom Thurmond, May 15, 1982.
- 47/ Letter from State Department to Members of the families, June 29, 1982.
- 48/ Meeting between R. Scott Greathead, Michael Posner and William Ford, and Judge Rauda Murcia, January 11, 1983.
- 49/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, January 20, 1983.
- 50/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, December 8, 1980.
- 51/ Id.
- 52/ Declaration of Margarieto Perez Nieto, December 22, 1981, and February 23, 1982.
- 53/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, December 29, 1981.
- 54/ Letter from U.S. Ambassador Deane Hinton to William Ford, March 11, 1982.
- 55/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, September 18, 1981.
- 56/ Statement made during meeting with members of the families, September 30, 1981.
- 57/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, March 26, 1981.
- 58/ Letter from State Department to Senator Strom Thurmond, May 15, 1982.
- 59/ See "FBI Status report on the Investigation," April 10, 1981.

FOOTNOTES
(con't.)

- 60/ Memorandum from Assistant Secretary of State Thomas Enders to Secretary of State Alexander Haig, April 15, 1981.
- 61/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, September 18, 1981.
- 62/ Rogers-Bowdler Report, at 9.
- 63/ Cable from U.S. Embassy, San Salvador, to State Department, Washington, January 20, 1983.
- 64/ Meetings between R. Scott Greathead, Michael Posner and William Ford, and Fiscal General Mario Rivera, January 8 and 12, 1983.
- 65/ Id.
- 66/ State Department, "Status of the Prosecution," February 17, 1982.

The CHAIRMAN. Thank you very much, Mr. Posner.

STATEMENT OF STEPHEN L. KASS, ESQ., THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK (FORMER CHAIRMAN, COMMITTEE ON INTER-AMERICAN AFFAIRS), NEW YORK, N.Y.

Mr. KASS. Thank you, Mr. Chairman. I appreciate the opportunity to address you and your colleagues this afternoon.

While it is often trying to be the last speaker on a long day's agenda, in this instance I think it may be appropriate, because I am hoping to speak about a recent mission to El Salvador which Adrian DeWind and I undertook on behalf of the Association of the Bar of the City of New York to study the workings of the criminal justice system in that country.

Mr. DeWind is a past president of the Association of the Bar and a member of the firm of Paul, Weiss, Rifkind, Wharton and Garrison. I am a former member of the executive committee of the association and past chairman of its Committee on Inter-American Affairs and a member of the firm of Berle, Butzel, Kass and Case in New York as well. I made my first trip to El Salvador in 1958.

The time is late, and what I would like to do with your permission is simply review the principal findings and recommendations which are set forth in a 45-page report which we have submitted to the committee staff and which is attached to this statement. After that, I would be pleased to answer any questions which you may have concerning these recommendations.

They are the following:

First, we believe the collapse of El Salvador's criminal justice system is general and pervasive. Indeed, as best we can tell, that system has never functioned effectively in the criminal justice field. The civil war in which the nation has been engulfed since 1980 has exacerbated and revealed the inadequacy of El Salvador's legal system. But even if the war were to end tomorrow, major changes would be required in Salvadoran society to create a modern criminal justice system and to permit that system to function fairly and effectively.

Second, among the factors contributing to the inadequacy of El Salvador's criminal justice system are inadequate training for lawyers and judges; insufficient staff and resources for prosecuting criminal offenses; widespread corruption throughout the legal system; intimidation of and physical violence against judges, jurors, prosecutors, lawyers, and witnesses; and a general conviction within the society that both the rich and the military are beyond the reach of the law.

Third, we believe there can be no significant improvement in El Salvador's criminal justice system without a strong civilian government to which the military and security forces are clearly subordinate and accountable, and without a new social consensus endorsed by the military and the major landowners and business leaders that tolerates diversity of opinion and political belief within that country, insists that all public and private security forces respect the person and rights of the citizenry, and subjects military and security personnel to the same legal rules, both in theory and practice, as all other citizens.

We see no reasonable hope for such a consensus, either at the present time or in the near future or indeed at any reasonable time, so long as

the military believes that its mission of eliminating subversion assures it of sufficient continuing U.S. support that it can effectively remain beyond the reach of the law.

Fourth, a civilian government and a requisite social consensus can be established, we would recommend the following specific reforms be implemented:

First, we think a civilian ministry of justice should be established in an entirely new form which combines the present investigatory capabilities of the national police, the national guard, and the treasury police, the prosecutorial functions of the Fiscal General, the custodial functions of the present Ministry of Justice, and the protective functions of a newly established corps of courts martial responsible for protecting judges, prosecutors, jurors, if any, and witnesses.

Second, we also believe that Supreme Court judges should no longer be elected by political bodies, as they are now, but should be appointed for at least 10-year terms by the President from among a group of nominees selected by an independent nonpartisan commission. Lower court judges should be appointed by the Supreme Court for terms of at least 5 years. All of those terms should convert to life terms upon reappointment at the end of the initial period.

Third, the use of juries in criminal trials should be suspended for a period of 5 years. A specially designed criminal law training institute should be established for judges and prosecutors. That is in order to provide at least some opportunity for the criminal justice system to work without the degree of intimidation that presently is directed at jurors.

Fourth, a mandatory national bar association should be established in order to train lawyers and to establish some discipline for curing the widespread problems of corruption within the bar itself.

Fifth, a central military prosecutor should be established within the Ministry of Defense with responsibility to investigate and prosecute all military crimes within any of the security forces. Each security force commander must be required to cooperate with the military prosecutor and to make available to him all relevant evidence and files. The military prosecutor should have the same obligation to cooperate with the newly established Ministry of Justice in the investigation of non-military crimes such as murder committed by security personnel.

Sixth, decree 507, which is the decree pursuant to which alleged subversives are arrested and detained without trial, should be repealed, and all civilians suspected of illegal acts should be tried in the criminal courts in accordance with applicable law.

Seventh, the powers and practices of the Government's newly established National Human Rights Commission should be expanded to include the ability to subpoena military files and to investigate into human rights abuses committed by security force personnel.

As an aside, let me mention that we met with that commission, with its chairman and with its executive director. While they have indeed been attempting to ascertain the whereabouts of missing people—there were 48 cases when we walked into the room to interview them and a 49th case arrived during the course of the interview—somebody had just been abducted a few hours earlier, nevertheless, the commission has not made any effort to inquire into abuses committed by the

military and to urge the prosecution of security forces. That is a meaningful failure and one which really must be cured.

Eighth, in view of the present adverse impact of the institutions referred to below on El Salvador's legal system, we think the following additional actions should be taken immediately without waiting for the reforms that I referred to above:

First, the treasury police, which are by all accounts the most lawless of all security forces within the country and the one with the fewest legitimate functions, should be disbanded. Its alcohol and narcotics control functions, if any, should be assigned to the national police.

Second, the local civil defense forces, which are the domain essentially of autonomous brigands in various communities, should also be disbanded and their legitimate functions of protecting rural communities should be assigned to the national guard.

Third, the President must announce and must carry out a policy of arresting and prosecuting all known participants in death squads, including civilian and military personnel.

Fourth, all political prisoners held more than 180 days without trial should be freed unconditionally. All others must be tried or freed within a 180-day period under ordinary rules of evidence and with full access of counsel.

Mr. Chairman, let me conclude with one or two thoughts with respect to the certification process that you have been discussing this afternoon. We believe that the certification of Secretary of State Shultz which has been submitted to this Congress pursuant to the International Security and Development Cooperation Act, to the effect that the Government of El Salvador "is achieving substantial control over all elements of its armed forces so as to bring an end to the indiscriminate torture and murder of Salvadoran citizens" is clearly unwarranted and unsupportable in view of the facts which we have outlined in our report.

Now, although the certification process imposed by Congress as a condition to continued military and economic aid has contributed to—and indeed I must tell you that I think it is primarily responsible for—some lessening in the rate of military lawlessness in the country, it is also true that the Secretary of State's certification contradicts the known facts in El Salvador. As a result, it not only appears to violate the language and purpose of our statute, but, more importantly for purposes of our inquiry, it encourages the belief of those elements within the Salvadoran security forces that, in the United States as well as in Salvador, the ends justify the means, that if you are after subversives and that is your mission, you are allowed to violate the law, that people will call black white or day night here just as easily as they do there, that law and obligations are just as relative in our country as in theirs.

As long as they believe that, they will never comply with any kind of a system of justice. As long as that is the case, we will never achieve our own goals.

To put the matter as plainly as I can, Mr. Chairman, either the Government of El Salvador controls its security forces or it does not. If it does, it is surely impossible to describe that Government as making a significant effort to comply with internationally recognized human rights. If it does not, then the Government has not achieved

substantial control over its armed forces in order to bring to end the torture and murder of its citizens.

In either event, on the basis of these undisputed facts, it is clear that the certification cannot be supported. Its greatest impact, I repeat, is not simply in what it does for American law but to its negative impact in El Salvador, for by denying both the meaning and intention of U.S. law in favor of our current policy objectives, the Secretary has reinforced the conviction of the security forces in El Salvador that elimination of subversives will continue to justify defiance of the law.

I would urge you to continue the certification process, Mr. Chairman, but in the future to add further conditions along the lines of the institutional changes which we have posed to you this afternoon, and further to insist that any Presidential certification be confirmed by Congress before it can become effective. Otherwise, it seems to me we are running the risk of defeating our purposes and our aid conditions precisely as we have been doing. In the long run, that will undermine our policy objectives. Thank you.

[Mr. Kass' prepared statement and attachment follows:]

PREPARED STATEMENT OF STEPHEN L. KASS

Good afternoon, Mr. Chairman. I appreciate this opportunity to appear before the Committee and to share with you the results of a mission which Adrian W. DeWind, a former President of the Association, and I undertook in January 1983 to review the administration of criminal justice in El Salvador on behalf of the Association of the Bar of the City of New York.

Because there are many others who wish to address you today, permit me simply to review for you the principal Findings and Recommendations of our Report (a complete copy of which has been submitted to the Committee's staff). Thereafter, I would be happy to respond, to the best of my ability, to any questions which either you or any other member of the Committee may have concerning those Findings and Recommendations.

FINDINGS AND RECOMMENDATIONS

The collapse of El Salvador's criminal system is general and pervasive. Indeed, as best we can tell, that system has never functioned effectively in the criminal justice field. The civil war in which the nation has been engulfed since 1980 has exacerbated and revealed the inadequacy of El Salvador's legal system, but even if the war were to end tomorrow, major changes would be required in Salvadoran society to create a modern criminal justice system and to permit that system to function fairly and effectively.

Among the factors contributing to the inadequacy of El Salvador's criminal justice system are inadequate training for lawyers and judges, insufficient staff and resources for prosecuting criminal offenses, widespread corruption throughout the legal system, intimidation of and physical violence against judges, jurors, prosecutors, lawyers and witnesses, and a general conviction within the society that both the rich and the military are beyond the reach of the law.

There can be no significant improvement in El Salvador's criminal justice system without a strong civilian government (to which the military and security forces are clearly subordinate and accountable) and without a new social consensus, endorsed by the military and the major landowners and business leaders, that tolerates diversity of opinion and political belief within the country, insists that all public and private security forces respect the person and rights of the citizenry and subjects military and security personnel to the same legal rules, both in theory and practice, as all other citizens.

We see no reasonable hope for such a consensus, either at the present time or in the near future or, indeed, at any reasonable time, so long as the military believes that its mission of eliminating "subversion" assures it of sufficient continuing United States support that it can effectively remain beyond the reach of the law.

Once a civilian government and the requisite social consensus are established, the following specific reforms should also be implemented:

(a) A new civilian Ministry of Justice should be established which combines the present investigative capabilities of the National Police, the National Guard and the Treasury Police; the prosecutorial functions of the Fiscal General; the custodial functions of the present Ministry of Justice; and the protective functions of a newly-established corps of marshals responsible for protecting judges, prosecutors, jurors (if any), and witnesses.

(b) Supreme Court judges should no longer be elected by political bodies but should be appointed for ten year terms by the President from among a group of nominees selected by an independent and non-partisan commission; lower court judges should be appointed by the Supreme Court for terms of at least five years.

(c) The use of juries in criminal trials should be suspended for a period of five years and a specially-designed criminal law training institute should be established for all judges and prosecutors.

(d) A mandatory national Bar Association should be established for all lawyers in El Salvador in order to promote both the competence and the honesty of the bar and to discipline members who engage in corrupt or illegal practices which undermine the integrity of the judicial system.

(e) A central military prosecutor should be established within the Ministry of Defense with responsibility to investigate and prosecute all military crimes and infractions within any of the security forces; each security force commander should be required to cooperate with the military prosecutor and to make available to him all relevant evidence and files; the military prosecutor should have the same obligation to cooperate with the newly-established Ministry of Justice in the investigation of non-military crimes committed by security personnel.

(f) Decree 507, as amended by Decree 943, should be repealed and civilians suspected of illegal acts should be tried in the criminal courts in accordance with applicable law.

(g) The powers and practices of the government's newly established National Human Rights Commission should be expanded to include subpoenas of military files and investigations into human rights abuses committed by security force personnel.

In view of the present adverse impact of the institutions referred to below on El Salvador's legal system, the following additional actions should be taken immediately:

(a) The Treasury Police, by all accounts the most lawless of the security forces and the one with the fewest legitimate functions, should be disbanded and its alcohol and narcotics control functions assigned to the National Police.

(b) The local Civil Defense forces, often the domain of autonomous brigands, should also be disbanded and their functions assigned to the National Guard.

(c) The President of the Republic should publicly announce—and carry out—a policy of arresting and prosecuting all known participants, go-betweens and employers of "death squads," including both civilian and military personnel.

(d) All political prisoners held more than 180 days without trial should be freed unconditionally; all others should be either tried or freed within that 180-day period, with full and immediate access to counsel and the right to be tried in a civilian court under ordinary rules of evidence and individual guarantees; all new political prisoners should also be tried in civilian courts within 60-90 days of their arrest.

The certification, dated January 21, 1983, of secretary of State Shultz, submitted to the Congress pursuant to Sections 728 (b) and (d) of the International Security and Development Cooperation Act of 1981 and Executive Order No. 12163, as amended, to the effect that the Government of El Salvador "is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens" is clearly unwarranted and unsupportable in view of the facts described in this Report.

Although the certification process imposed by Congress as a condition to continued United States military and economic aid to El Salvador has clearly contributed—indeed, appears to be primarily responsible for—some lessening in the rate of military lawlessness in the country and those few disciplinary actions which have been taken against errant security personnel, the Secretary of State's Certification contradicts the known facts in El Salvador and appears to violate both the language and purpose of that Act. As such, it can only en-

courage the belief of the most lawless elements within Salvadoran society that, in the United States as well as in El Salvador, the elimination of "subversives" takes priority over the rule of law.

To put the matter plainly, either the Government of El Salvador controls its security forces or it does not. If it does, it is impossible to describe that government as "making a concerted and significant effort to comply with internationally recognized human rights." If it does not, then the government has not achieved "substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens." In either event, on the basis of the largely undisputed facts set forth above, it is clear that the Secretary's Certification is unwarranted and unsupported.

The Certification is thus, in our judgment, plainly inconsistent with United States law. Yet its great negative impact may be in El Salvador itself. For by denying both the meaning and intention of United States law in favor of current policy objectives, the Secretary has reinforced the conviction of El Salvador's security forces that, even for the United States, the elimination of "subversives" justifies defiance of the law.

Thank you, Mr. Chairman, for this opportunity to express our views on this most important subject.

JUSTICE IN EL SALVADOR

Report Of A Mission Of Inquiry
Of The Association Of The Bar
Of The City Of New York

The initiative for a lawyer's mission to study judicial administration in El Salvador came from discussions between the Committee on International Human Rights of The Association of the Bar of the City of New York and the Lawyers Committee for International Human Rights. Both groups felt that such a mission should examine the widespread charges of a virtual collapse in the administration of justice in El Salvador and, if such a collapse were confirmed, its implications for the observance of human rights in that country. The proposed mission was approved by the President and the Executive Committee of The Association, which authorized a visit to El Salvador by a delegation headed by Adrian W. DeWind, a past President of The Association. A two-man visiting group was established with the addition of Stephen L. Kass, a former Executive Committee member and past Chairman of The Association's Committee on Inter-American Affairs.

The scope of the mission was further defined in consultations between the initiating committees and the delegation. While a general inquiry into the justice sys-

tem, the adequacy of its resources and the efficiency of its operation would be involved, it was apparent that particular emphasis would be required on the effects of the dominant role played by the military and security forces in El Salvador's criminal justice system. In addition, it was felt necessary to inquire into the details of those cases pointed to by the United States State Department in its July 27, 1982 Certification of human rights conditions in El Salvador as evidence of the legal system's growing capacity to discipline military personnel for human rights abuses. At July 31, 1982, these 109 cases apparently constituted the only evidence that any security force personnel had been disciplined for human rights abuses.

Another part of our inquiry was to review the judicial process affecting persons held for alleged political offenses, such as participation in subversive organizations, support of guerrillas, sabotage or violence against government forces and personnel. These cases are prosecuted under Decree No. 507, which takes them out of normal procedures and constitutional due process guarantees and transfers them to a special military judge for review.

In preparation for our mission, we met with the Salvadoran Ambassador to the United Nations, Dr. Mauricio

Rosales, who graciously offered letters of introduction to prominent judges, lawyers and legal scholars in his country. We also met with Assistant Secretary of State for Human Rights, Elliott Abrams, his assistant for El Salvador, Robert Snyder, and L. Craig Johnstone, in charge of the Department's office of Central American Affairs. The United States Embassy in San Salvador also assisted us with extensive planning on our behalf and, once we arrived, courteous and informative aid (including transportation facilities) that greatly contributed to the efficiency of the mission. Ambassador Dean R. Hinton was particularly gracious in finding time for two candid and thoughtful meetings with us during our stay.

While in El Salvador, we met with Dr. Arturo Zeledon Castrillo, President of the Supreme Court, Dr. Ramiro Mendez Azahar, Minister of Justice, Dr. Mario Adalberto Rivera, the Fiscal General (Chief Prosecutor), Dr. Francisco Jose Guerrero, Minister of the Presidency, Dr. Pablo Mauricio Alvergue and Dr. Gutierrez Castro, Vice Presidents, and Col. Reynaldo Lopez Nuila, Commander of the National Police. We also met with former President Jose Napoleon Duarte, with representatives of the Accion Democratico party in the Constituent Assembly, with the

Director of Mariona prison (which we visited) and with representatives of the government's newly-created Human Rights Commission. We spent considerable time as well with representatives of the San Salvador Bar Association and with a number of the leading private attorneys in El Salvador. Finally, we interviewed staff attorneys and others associated with the three surviving private human rights groups in El Salvador, the Tutela Legal (Legal Protection) Office of the Archdiocese of El Salvador, Socorro Juridico Cristiano (Christian Legal Aid) and the Human Rights Commission of El Salvador (we did not interview a fourth group, the Catholic University Center for Documentation and Information, which publishes periodic reports on human rights matters in El Salvador).

We are grateful for the time, courtesy and wisdom which our colleagues in El Salvador, as well as so many others with whom we met, shared so generously with us during our stay. Although we found a substantial consensus on many of the subjects covered in the Report, the Findings and Recommendations which follow are our own.

FINDINGS AND RECOMMENDATIONS

1. The collapse of El Salvador's criminal justice system is general and pervasive. Indeed, as best we can tell, that system has never functioned effectively in the criminal justice field. The civil war in which the nation has been engulfed since 1980 has exacerbated and revealed the inadequacy of El Salvador's legal system, but even if the war were to end tomorrow, major changes would be required in Salvadoran society to create a modern criminal justice system and to permit that system to function fairly and effectively.

2. Among the factors contributing to the inadequacy of El Salvador's criminal justice system are inadequate training for lawyers and judges, insufficient staff and resources for prosecuting criminal offenses, widespread corruption throughout the legal system, intimidation of and physical violence against judges, jurors, prosecutors, lawyers and witnesses, and a general conviction within the society that both the rich and the military are beyond the reach of the law.

3. There can be no significant improvement in El Salvador's criminal justice system without a strong

civilian government' (to which the military and security forces are clearly subordinate and accountable) and without a new social consensus, endorsed by the military and security forces as well as the major landowners and business leaders, that tolerates diversity of opinion and political belief within the country, insists that all public and private security forces respect the person, property and rights of the citizenry and subjects military and security personnel to the same legal rules, both in theory and practice, as all other citizens.

4. We see no reasonable hope for such a consensus, either at the present time or in the near future or, indeed, at any reasonable time, so long as the military believes that its mission of eliminating "subversion" assures it of sufficient continuing United States support to effectively remain beyond the reach of either Salvadoran law or any civilian government.

5. Once a civilian government and the requisite social consensus are established, the following specific reforms should also be implemented:

- (a) A new civilian Ministry of Justice should be established which combines the present investigative capabilities of the National Police, the

National Guard and the Treasury Police; the prosecutorial functions of the Fiscal General; the custodial functions of the present Ministry of Justice; and the protective functions of a newly-established corps of marshals responsible for protecting judges, prosecutors, jurors (if any), and witnesses.

- (b) Supreme Court judges should no longer be elected by political bodies but should be appointed for ten year terms by the President from among a group of nominees selected by an independent and non-partisan commission; lower court judges should be appointed by the Supreme Court for terms of at least five years.
- (c) The use of juries in criminal trials should be suspended for a period of five years and a specially-designed criminal law training institute should be established for all judges and prosecutors.
- (d) A mandatory national Bar Association should be established for all lawyers in El Salvador in order to promote both the competence and the honesty of the bar and to discipline members who

engage in corrupt or illegal practices which undermine the integrity of the judicial system.

- (e) A central military prosecutor should be established within the Ministry of Defense with responsibility to investigate and prosecute all military crimes and infractions within any of the security forces; each security force commander should be required to cooperate with the military prosecutor and to make available to him all relevant evidence and files; the military prosecutor should have the same obligation to cooperate with the newly-established Ministry of Justice in the investigation of non-military crimes committed by security personnel.
- (f) Decree 507, as amended by Decree 943, should be repealed and civilians suspected of illegal acts should be tried in the criminal courts in accordance with applicable law.
- (g) The powers and practices of the government's newly established National Human Rights Commission should be expanded to include subpoenas of military files and investigations into human rights abuses committed by security force personnel.

6. In view of the present adverse impact of the institutions referred to below on El Salvador's legal system, the following additional actions should be taken immediately:

- (a) The Treasury Police, by all accounts the most lawless of the security forces and the one with the fewest legitimate functions, should be disbanded and its alcohol and narcotics control functions assigned to the National Police.
- (b) The local Civil Defense forces, often the domain of autonomous brigands, should also be disbanded and their functions assigned to the National Guard.
- (c) The President of the Republic should publicly announce -- and carry out -- a policy of arresting and prosecuting all known participants, go-betweens and employers of "death squads," including both civilian and military personnel.
- (d) All political prisoners held more than 180 days without trial should be freed unconditionally; all others should be either tried or freed within that 180-day period, with full and immediate access to counsel and the right to be tried in a

civilian court under ordinary rules of evidence and individual guarantees; all new political prisoners should also be tried in civilian courts within 60-90 days of their arrest.

7. The certification, dated January 21, 1983, of Secretary of State Shultz, submitted to the Congress pursuant to Sections 728(b) and (d) of the International Security and Development Cooperation Act of 1981 and Executive Order No. 12163, as amended, to the effect that the government of El Salvador "is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens" is clearly unwarranted and unsupportable in view of the facts described in this Report. Although the certification process imposed by Congress as a condition to continued United States military and economic aid to El Salvador has clearly contributed -- indeed, appears to be primarily responsible for -- some lessening in the rate of military lawlessness in the country and those few disciplinary actions which have been taken against errant security personnel, the Secretary of State's Certification contradicts the known facts in El Salvador and appears to violate both the language and purpose of that Act. As such, it can only encourage the belief of the most lawless elements within Salvadoran society that, in the United States as well as in El Salvador, the elimination of "subversives" takes priority over the rule of law.

1. The Collapse of Criminal Justice in El Salvador

During the course of our inquiry, we found a virtually unanimous consensus, in which we concur, that the criminal justice system in El Salvador is in a state of collapse. This fact can hardly be put more plainly than as described by Ambassador Hinton in a speech to the American Chamber of Commerce on October 29, 1982:

"Extremists of the left and right continue to murder wantonly, apparently basing their despicable actions on rumor, ideological persuasion, hearsay, and personal animosity.

"Common criminals are having a field day. There is no doubt that El Salvador's political agony provides cover for common thugs. Everyone here knows that kidnapping for criminal gain has been carried out under the guise of political action.

"The problem exists at every step of the criminal justice process. Who among you is not intimidated by it?

"Who dares to speak out when you witness a person being dragged off by 'heavily armed men in civilian clothes' in the middle of the night? Who will bear witness to murder?

"Where are sufficiently trained detectives to investigate the wave of crimes committed daily?

"Are there anywhere near enough properly trained and rewarded prosecutors to deal with the violence in the society? . . . as to make successful prosecution

virtually impossible for any but a self-confessed criminal?

"Are judges sufficiently protected and isolated so as to assure verdicts based neither on bribery nor on fear?

"Can the prison system absorb and control those who should be convicted?

"These are questions with which all civilized societies must deal, but it is sad to see a society in which the answers are so painfully and consistently inadequate.

"If you are not convinced that I am talking about a fundamental and critical problem, consider these facts. Since 1979 perhaps as many as 30,000 Salvadorans have been killed illegally, that is, not in battle. Less than 1,500 cases of 'crimes against the person', that is, homicide, assault, and battery, have been prosecuted before your courts. Most striking of all, there have been less than 200 convictions for these crimes."

Although the conditions described by Ambassador Hinton have been aggravated by three years of civil war and the extraordinary level of official violence which the security forces have visited upon the civilian population during this period, nearly every lawyer and observer with whom we spoke emphasized that El Salvador's administration of justice, in both the civil and criminal fields, has long suffered from the structural deficiencies and abusive practices described below.

(a) Corruption. Corruption is said to be widespread throughout the legal system. We were told repeatedly that a principal reason for the historically low conviction rate in ordinary criminal cases is the ability of those with money to secure acquittals through bribery of jurors, judges and prosecutors.* Bribery is apparently sufficiently successful that, in the words of one lawyer, "a rich man never goes to jail in El Salvador." We were told that corruption is also common in civil litigation, where the jury system is absent and where well-financed litigants make effective use of bribery in order to assure successful results. Lawyers not infrequently participate as conduits for bribes in both commercial and criminal proceedings.

(b) Intimidation. Intimidation of judges, jurors, prosecutors, witnesses and opposing parties also has long antecedents within the Salvadoran legal system. However, these practices have been greatly aggravated by the recent elevation of violence within the country as a whole. Where bribery fails, we were told, even civil

*This may be one reason for the unusual Salvadoran institution of an Acusador Particular, a privately-engaged lawyer who functions as a kind of adjunct prosecutor at the request of aggrieved parties.

litigants have often resorted to threats (and, at times, acts) of violence to intimidate an adversary or a hostile witness.

The problem is particularly acute in criminal proceedings. El Salvador's Constitution has long provided for jury trials in serious criminal cases, with a five-member jury drawn from the community in which the trial is held. In San Salvador and even more often in interior portions of the country, such jurors are subject to direct threats against their safety and the safety of their families, threats which appear to be an established part of Salvadoran life and against which virtually no protection is available. Even in common criminals trials, judges, prosecutors and witnesses have often been subject to similar threats. Not surprisingly, the conviction rate in common criminal prosecutions is said to range from 10% to 30% of those cases actually prosecuted.

In political cases, the conviction rate is even lower. Judges, prosecutors and jurors were said to have been particularly intimidated during the early part of the civil war by friends or families of defendants accused of subversive or insurgent acts against the government, with the result that many such defendants were quickly freed

by the courts. As in Argentina, this early tendency of the courts to free suspected "subversives" is often cited by military commanders to justify the prolonged detention by security forces of such persons without charges and as at least partial mitigation for the military's practice of killing the vast majority of its prisoners and detainees.

However, it is in the context of the investigation and prosecution of security force personnel that the impact of judicial intimidation becomes most apparent. We were told over and over again during our interviews that prosecution of military personnel for common crimes without political motivation (whether murder, torture, kidnapping or other serious offenses) can subject judge, prosecutor, jurors and witnesses to extraordinary personal dangers, with the result that convictions are rare for even the most blatant criminal acts by security personnel. Where such acts are directed with political motive against alleged "subversives" or their families, virtually no one in El Salvador would risk prosecuting, convicting or testifying against a military or security force agent for fear of prompt retaliation by his colleagues. In view of the well-known disappearance and murder of several prominent

judges during the past several years, this fear seems well-founded.*

(c) Inadequate Training. It is widely observed in El Salvador that, following the collapse of its Law School in mid-1979, recent law school graduates have not received what established lawyers regard as even minimally adequate legal training. The impact of this is particularly evident in the criminal system, where approximately 80% of the Fiscal General's prosecutors are law students still completing their studies. Local justices of the peace are usually not lawyers and are often not educated at all. Few, if any, have any comprehension of the legal process over which they preside. Judges of the regular courts as well often lack substantial legal training or experience. We were told that, with the exception of the Chief Justice, even the Supreme Court was composed largely of political appointees with little or no prior judicial experience. Moreover, they remain politically vulnerable by reason of short-term appointments by the

*The International Commission of Jurists' Centre for the Independence of Judges and Lawyers reported one particularly brutal instance in which five relatives of one judge in San Salvador were assassinated on April 14, 1981. According to the ICJ, the abducted relatives were decapitated and their heads left at the judge's house.

Constituent Assembly and, we were told, are expected to represent their respective parties' positions on issues that come before the Court.

(d) Insufficient Resources. The legal system also suffers, like many others, from insufficient resources. Perhaps the most acute shortage is in the Fiscal General's Office, where 12 lawyers and 50 law students are responsible for prosecuting all crimes in El Salvador, including common crimes committed by military personnel. In addition, the Fiscal has no funds or facilities for investigative work, laboratory analysis or, it would appear, effective caseload supervision or evaluation. The absence of investigative and laboratory facilities means that the Fiscal and his staff are entirely dependent on each of the security forces with which it deals for evidence and follow-up investigation in any case, a dependency which all but prevents investigation of abuses by security forces. In such cases, we were told by the Fiscal, his staff relies entirely on the information furnished by it by the chief of the relevant security force, who furnishes only what he pleases to.

(e) Availability of Counsel. It is widely acknowledged that criminal defendants, even in the case

of common crimes, do not have adequate access to private counsel and that court-appointed lawyers (who generally serve without fee) can offer only minimal assistance in a legal system accustomed to bribery and physical intimidation. In political cases arising under Decree 507 (see below), even the financial ability to retain counsel is of little use since the Decree itself bars all participation by defense counsel on behalf of the defendant (other than establishing his whereabouts through the Recurso de Exhibicion Personal).

Even if defense representation were permitted in 507 cases, we were told that there are no more than 5-10 lawyers in the country who would risk accepting such cases, at any price, in view of the number of lawyers (often affiliated with Socorro Juridico or the Human Rights Commission) who have been assassinated in the past. As for counsel willing to represent a family seeking prosecution of security personnel for abducting, torturing or murdering a missing or deceased relative, we were told (and our review of the case of the murdered United States church workers confirms) that not a single lawyer in El Salvador would be willing to undertake such representation.

2. The Military and the Courts

El Salvador's security forces are currently divided into five components: the Army, Civil Defense units loosely connected to the Army, the National Guard, the National Police, and the Treasury Police. In addition to these officially-recognized security forces, unofficial "death squads" (present or former members of the security forces paid by private persons) operate with either the acquiescence or the active participation of middle-level security agents.

In theory, each of these security forces reports to and is under the control of the Minister of Defense, though in practice the Army, the National Guard, the National Police and the Treasury Police have all functioned autonomously under the direction of their respective commanders. Civil defense units, though nominally affiliated with the Army, appear frequently to function virtually without control at the local level, with little or no supervision or coordination.

The Army, which is said to include some 22,500 members, carries out both military and internal security operations. The National Guard and the National Police, each with some 4,500 members, are responsible for both

police and security operations in the countryside and the capital, respectively. The Treasury Police, which have some 1,000 members, are nominally responsible for alcohol and narcotics control, but in practice are said to engage almost exclusively in security operations. Local Civil Defense units, supposedly responsible for protecting isolated villages against guerilla attack, in practice operate as instruments to carry out the whims of their individual commanders.

By all accounts, each of the security forces has engaged in massive violations of fundamental human rights in the course of its security operations against "subversive" individuals and groups. (Our mission did not include any analysis of abuses committed by the Army or the security forces during the course of military or para-military operations).^{*} In general, these abuses fall into three categories:

- (a) the abduction, torture and murder of Salvadoran citizens alleged to be "subversive;"

^{*}Some indication of the scope of those abuses may perhaps be deduced from the government's oral advice to the United States Embassy in January, 1983 that, for the six-month period ended December 31, 1982, the military took a total of 37 prisoners in combat with guerrilla forces.

- (b) prolonged detention without trial of any "subversive" who survives initial interrogation; and
- (c) the intimidation of judges, prosecutors, lawyers, jurors and witnesses in any judicial inquiry into these abuses.

(a) Abduction, torture and murder. It is widely acknowledged, both within and without the government, that Salvadoran security forces engage in the practice of abducting civilians from their homes (and, on occasion, places of work or public gathering places), that such persons may expect to be severely tortured and thereafter murdered and that some thirty to forty thousand civilians have been murdered (exclusive of military operations) by security forces over the past three years.

There is some disagreement as to the precise numbers of persons murdered by security forces during 1982. As to this issue, there are four principal sources of information: Socorro Juridico, Tutela Legal, the Human Rights Commission and daily press reports. During our visit, representatives of Socorro Juridico, Tutela Legal and the Human Rights Commission each furnished us with detailed summaries of security force murders report-

ed by them, including the names, ages, dates and places of arrest and, in many cases, identity of the detaining security force. Based on these procedures, Socorro Juridico concluded that 5,967 persons were abducted and murdered by security forces during 1982; Tutela Legal reported 5,399 such murders; and the Human Rights Commission reported 5,553 such murders during the year.*. The fourth source, daily reports in the generally pro-government press, is that relied upon by the United States Embassy in reporting on the level of political violence in El Salvador. Based on those reports, the Embassy concluded that over 2,600 civilians were murdered by security forces during the year.**

All political prisoners whom we interviewed at Mariona Prison reported having been tortured physically by security forces following their arrest. Representatives of prisoners' organization at that prison also furnished us with a detailed census of all 700 political prisoners

*Curiously, the State Department Certification (Appendix C) reports these figures (which it disputes) as several hundred lower for each organization.

**The State Department's procedures for monitoring and reporting human rights violations in El Salvador have been severely criticized by Americas Watch. See "U.S. Reporting on Human Rights in El Salvador: Methodology at Odds with Knowledge," (June, 1982).

detained in that facility at December 31, 1982 and indicated that virtually all such prisoners had been subjected to either physical or psychological torture.*

During the course of our mission to El Salvador, we met only one individual -- Colonel Lopez Nuila, commander of the National Police - who claimed that torture and murder by his security forces had been brought to an effective halt. Colonel Lopez Nuila told us that, with the exception of two isolated instances (which had, he said, been appropriately punished) National Police personnel were not, and during his administration had not been, engaged in either torture or murder of civilians. Although we found substantial agreement among other government officials and private observers that Colonel Lopez Nuila had made substantial efforts toward reducing the incidence of terror by the National Police, no one with whom we spoke agreed with his statement that all such practices had been effectively brought under control. Indeed, a number of the

*By coincidence, a former member of the U.S. Embassy staff who is currently assigned to Washington was with us at the time of these interviews. With the exception of one prisoner who bore obvious physical signs of torture (acid burns), the Embassy representative tended to discount the reports of widespread torture as those of "professional leftists."

political prisoners with whom we spoke specifically reported having been tortured by members of the National Police during the second half of 1982.*

One final note on this macabre subject of officially-sponsored murder is of interest. Unlike most of its counterparts around the world, the United States Embassy in San Salvador assigns one staff member to make a daily "body run" to a number of well-utilized garbage dumps around the capital. During recent months, bodies of civilians, murdered mostly at night, have been recovered each day from these locations at a rate of twelve to fifteen a week. This could not happen, the Embassy (and everyone else) admits, without participation of the security forces. The number is in accord with Socorro Juridico's current estimate of some sixty security force murders each month in San Salvador itself. The country-wide estimate is 400 to 500 a month.

(b) Detention Without Trial. Pursuant to Decree 507 (December 3, 1980), as amended by Decree 943 (January 15, 1982), security forces are authorized to detain any

*It is widely reported that torture by security forces is now practiced at clandestine interrogation houses in San Salvador and elsewhere prior to bringing prisoners to police headquarters.

individual who is suspected of having participated in terrorist activities or other treasonous or seditious activities. Such detainees may be held incommunicado for up to fifteen days (in practice, often much longer), during which a military judge determines, in an ex parte proceeding in which the detained person has no participation, whether or not sufficient grounds exist for continued detention. If so (and it appears that such grounds are nearly always found to exist), the detainee is transferred to the Mariona prison (or, if a woman, to Ilopango prison) while the case passes to the jurisdiction of a Judge of Military Instruction, who is directed to decide, within a period of 180 days after the detainee's arrest, whether the detainee should be freed or transferred to the civilian courts for further prosecution. This process, it should be noted, is also ex parte, with no participation by either the detainee or any counsel representing him.

In practice, many political prisoners are detained well beyond the 180-day period authorized by Decree 507, with a substantial number of those being held for one or two years or more. At the present time, Mariona prison contains some 700 male political prisoners held under Decree 507 for periods ranging from a few months to two and

one half years (with a clear majority held more than 180 days), and Ilopango prison now holds by recent count 86 female political prisoners, some of whom have been detained for extended periods as well. As noted above, virtually all of these prisoners, both male and female, report that they were tortured (both physically and psychologically) by either the National Guard, Treasury police, National police or Army immediately following their arrest.

For all its obvious faults, under both the Salvadoran Constitution and any elemental standard of due process, the 507 detention procedure is regarded in El Salvador as having a humane aspect. The detainees are, after all, very lucky to be alive and they can now enjoy modestly adequate prison conditions and weekly visiting privileges from their families, who are thus among the fortunate few who have been able to locate missing relatives.

During our interview with former President Duarte, we were told that Decree 507 -- and in particular the ex parte detention procedures administered by unidentified military judge -- were required by the security forces as a condition to their willingness to modify, however slightly, their established practice of simply shooting prisoners.

Anything less than extended confinement under direct military supervision was regarded by security forces as simply too risky in view of the recognized inability of Salvadoran courts to effectively prosecute persons believed by the security forces to be "subversive." It is one of the ironies of the Salvadoran justice system, then, that the increasing number of political prisoners in the country is seen as an index of increased control over outright murder by the security forces. Before endorsing this analysis, however, one should note that, by any test, the 507 detention process has had only the most limited impact in this regard. During 1982, approximately 450 alleged subversives were detained (and remain in custody), under Decree 507.* However, Socorro Juridico, Tutela Legal and the Human Rights Commission indicate that between 5,500 and 6,000 of those seized by the security forces during 1982 were simply murdered. Moreover, the 507 procedures appear to have had no restraining impact whatsoever on the incidence of torture by security forces.

*A small number of persons detained were apparently released during 1982, though this figure was not available to us.

(c) Judicial Review of Security Actions.

So far as we can determine from our conversations with the Fiscal General, the Minister of Justice, the Director of Mariona Prison, the United States Embassy staff, the government's new National Human Rights Commission and private lawyers, there has not been a single case in which either the civilian or military courts of El Salvador have disciplined any member of the security forces for murder, kidnapping, torture or other abuse of civilians alleged to be "subversive."

The only known instances of prosecution of security officers for such abuses involve the murder of the four United States church workers murdered in Chalatenango, El Salvador on December 2, 1980, and the murder of two United States representatives of the American Institute for Free Labor Development (AIFLD) in Washington. In the former case, the Lawyers' Committee for International Human Rights has reported, based on a visit to El Salvador in January 1983 by its Executive Director and by the Chairman of The Association's Committee on International Human Rights, that:

"[F]or all the attention that has been paid to this case, the government of El Salvador remains unwilling or unable to translate its promises into the trial and conviction of the guilty parties. Judged by any reasonable standard, the

record of this case reveals a shocking pattern of official indifference, incompetence and ill-will -- attitudes which still prevail. The case stands, more than anything, as testimony to the complete breakdown of the rule of law in El Salvador." ("Justice in El Salvador: A Case Study," February 1, 1983)

In the AIFLD case, the halting pace of prosecutions against only two of the five alleged participants in that murder was one of the factors that led Ambassador Hinton to state in his October speech:

"American citizens in El Salvador have been among the murdered . . . Is it any wonder that much of the world is predisposed to believe the worst of a system which almost never brings to justice either those who perpetrate these acts or those who order them?"

At the time of its July 27, 1982 certification of improved human rights conditions in El Salvador, the State Department pointed to some 109 cases in which members of the security forces had allegedly been disciplined (of whom 56 had been charged with violations of law in the courts) and an additional 20 cases in which members of Civil Defense forces had been disciplined by military authorities for improper conduct. According to the State Department, these cases indicated an increasing degree of judicial control over the actions of lawless security force personnel.

In response to repeated requests by Americas Watch and others for detailed information concerning such cases, the State Department, after first refusing to release such information on the ground that it had been obtained "on a very confidential and privileged basis," later reported that, through the Embassy in San Salvador, it was attempting to obtain such information from Salvadoran security forces. On December 2, 1982, the State Department advised Representative Bonker that, of the 56 cases cited in the July certification that had been referred to the courts for prosecution, 44 involved "human rights abuses." No further information was apparently available from the security forces concerning any of these 44 cases (which had not then been confirmed by the Embassy) except that none had yet resulted in a conviction.

During our interviews with Colonel Lopez Nuila, the Minister of Justice, and the Fiscal General, we asked whether any further information was available concerning these 44 cases or, indeed, whether any statistical data was available concerning judicial proceedings against security force personnel. We were told that no such data was available, either publicly or for the internal use of the government. The Fiscal promised, however, to try to

compile such data from his files and to furnish it to us (and the Embassy) in the near future. To date, no such information has been received.

At the time of our visit, we were advised that the Embassy had also requested, and the Salvadoran Chief of Staff had allegedly prepared (but as of January 15, 1983 had not yet delivered), a current analysis of all disciplinary and judicial proceedings then pending against security personnel, with particular attention to the status of cases involving murder, torture and rape. A week later, in its January 21, 1983 Certification Report, the State Department stated, on the basis of a verbal report from the Salvadoran government, that 141 regular military personnel were "under detention for abuses of authority," and that an additional 55 Civil Defense personnel had been detained for similar abuses.

Several things should be noted about these statistics. First, they are completely unconfirmed by the Embassy; no back-up information of any nature concerning them has been furnished by either the military, judicial or prosecuting authorities. Thus there is no way of knowing at this time the names of the persons detained, whether they are being held by military or civil authorities,

whether their cases have been referred to the courts and, if so, the status of such cases and the punishment, if any, that has been requested by the Fiscal General. Second, it is not at all clear what the government means by "abuse of authority." Although the Embassy apparently interprets this phrase to include only murder, robbery, assault and rape, the government's figures may include a broader range of military and civilian offenses. Third, and most significantly, we were told by the Embassy staff that none of these 141 cases was likely to involve abusive security actions against alleged "subversives"; rather all of these detentions likely involve isolated criminal acts, though of a serious kind, by military or police personnel having nothing to do with the official business of eliminating persons thought to be undesirable by the security forces.* Although it was not mentioned, presumably "death squad" activities are also excluded from the detention figures.**

*It is also unclear how many of the 44, 56 or 109 cases referred to in the July, 1983 Certification report are included within the 141 cases of detention cited in the January, 1983 report.

**We have asked the Embassy for copies of any supporting materials received from the Salvadoran government and have been assured that they will be forwarded to us promptly upon their receipt.

3. Institutional Reforms

As set forth at the outset of this Report, we believe that the primary -- and prerequisite -- institutional reform required to improve El Salvador's criminal justice system is the establishment of an effective civilian government with the strength and support to require the military to comply with the law. Without such a government, or without the military's recognition that it must perform its functions in accordance with the law, further institutional reforms cannot be effective.

Once the principle of a strong civilian government is accepted, however, there are a number of institutional reforms which we believe should be undertaken immediately. Although most of these reforms (which are set forth in the Findings and Recommendations that appear at the beginning of the Report) are self-explanatory, it is perhaps useful to note the following by way of further explanation:

(a) A New Centralized Ministry of Justice:

At the present time, no single institution in El Salvador has responsibility for investigating and prosecuting crimes by security force personnel. Nor is any of the security forces accountable to any other branch of government with respect to the investigation of criminal actions by its

members. We believe it important to centralize responsibility for these functions in the new Ministry of Justice in order to re-establish the principle that security force members are subject to the same rules of law as all other citizens and to do so in a way which avoids dividing investigating and prosecuting responsibility between separate agencies.

We have also concluded, after considerable deliberation and discussion with lawyers, judges and government officials in El Salvador, that common crimes committed by military personnel should continue to be prosecuted in the civilian courts, rather than in special military courts (which have been suggested as a somewhat more acceptable procedure for the security forces). Although we are cognizant of the appeal of this latter proposal in terms of making prosecution of security force personnel more palatable in the short run, we believe that no system will work unless the military first accepts the principle that its members are accountable in accordance with the law and that, if this principle is accepted, a single system of justice should prevail for all citizens.

On the other hand, we do concur with the suggestion made by numerous observers (including the President

of the Supreme Court) that jury trials be suspended in criminal proceedings in order to overcome the acute problem of intimidation which has characterized the criminal law system for many years. It is our hope, however, that jury trials can be re-established after a period of, say, five years once the criminal justice system has been accepted on its own terms and adequate judges, prosecutors and protective services installed to safeguard the integrity of that system.

(b) Disbanding Treasury Police, Civil Defense Forces and Death Squads: Since they perform few, if any, legitimate functions and are, by all accounts, the worst violators of the most basic standards of human decency, the Treasury Police and the Civil Defense forces should be disbanded and their respective functions assigned to the National Police and the National Guard. These bodies appear somewhat more subject to civilian control, and the current leadership of the National Police has at least reduced the incidence of violence within that command.

At the same time -- and in order to discourage former Treasury Police from joining their ranks -- the death squads must be eliminated without further delay. As an immediate first step, we urge the President of El

Salvador to make clear, through public and private communications and through direct action, that any military or civilian participant in -- or employer of -- death squad operations will be arrested and tried for murder. Although we were told that privately-engaged death squads long predate the current civil war in El Salvador, the time has come when wealthy citizens, as well as the military, must recognize that they, too, are subject to the law. Unless this principle is accepted, both in theory and in practice, by the leaders of Salvadoran society, we entertain little hope for a meaningful system of law and criminal justice in that nation.

(c) Judicial Selection: During our conversations with the President of the Supreme Court, lawyers and other observers of the Salvadoran judicial system, perhaps the most repeated theme was the need for an improved system for selecting, training and assuring the long-term tenure and independence of judges. In view of the widespread agreement that the present system of permitting the political parties in the Constituent Assembly to, in effect, designate representatives on the Supreme Court, we have proposed the creation of an independent non-partisan Commission to evaluate the professional competence and prior

judicial experience of potential Supreme Court nominees and submit to the President a list of individuals qualified for such service. The President would appoint new Supreme Court judges from among those on the list, with the understanding that at least a majority of Supreme Court judges in office at any time should have had prior judicial experience at either the Supreme Court or lower court level. All lower court appointments should be made by the Supreme Court itself, again with the understanding that, except in unusual cases, appellate court judges should be drawn from those with prior experience as trial judges and that trial judges should themselves have demonstrated, either through practice or scholarship, reasonable standards of professional competence.

Such an approach, suitably adapted to El Salvador's civil law traditions, could go far toward establishing the "judicial career" which many of our informants believe to be a necessary precondition to lasting judicial independence in the country. Although life tenure for judges seems unrealistic in El Salvador at this time, we believe that Supreme Court judges should serve for at least ten-year terms and that lower court judges should serve for at least five years, in each case with the term

converting to life tenure upon re-appointment at the end of the initial term.

(d) 507 Trial Procedures: Decree 507, as amended and implemented, imposes unacceptable constraints upon an accused's right to defend himself, to have the assistance of counsel in that defense, to know the evidence against him and to test that evidence in a trial before an impartial court in accordance with accepted rules of evidence. The Decree should therefore be repealed and all persons suspected of illegal acts, including "subversive" acts, should be tried in the criminal courts in accordance with applicable substantive and procedural law. Those political prisoners who have been held more than the 180 days authorized by Decree 507 should be freed unconditionally; all other political prisoners should either be freed or brought to trial within 180 days of their arrest. Such prisoners must be afforded full and immediate access to private counsel and should be tried in the criminal courts under established rules of evidence.

Because Salvadoran criminal law requires a preliminary showing of evidence against an accused individual within 72 hours of his arrest, the security forces have long objected that they are unable to present such evidence

in a legally sufficient manner in the case of subversive acts. It was this objection that, in part, led to the 507 detention process, which authorizes an initial 15-day detention period (in practice often extended) for investigative purposes in political cases. We remain skeptical as to the need for a prolonged investigative process to support even preliminary evidence against an individual who has already been arrested. However, if a similar 15-day detention period were authorized in the criminal courts in the case of persons accused of "subversive" acts, then such defendants should at least be brought to trial on an expedited basis within 60 or 90 days after their arrest. Otherwise, they would be deprived of the benefits of the 72-hour rule while remaining in detention for the extended periods which characterize even common criminal cases in El Salvador.

(e) National Human Rights Commission: During our stay in El Salvador, we met with the Executive Director and three members of the government's newly established National Human Rights Commission, which took office in December, 1982 with considerable fanfare. At the time of our meeting on January 15, 1983, the Commission was still in the process of establishing its office and engaging staff,

but it had already begun receiving inquiries from the public concerning the whereabouts of missing relatives. At the time of our interview, 48 such inquiries had been received (a 49th case, concerning a young woman dragged from her home by police officials at 3:00 a.m. that morning, was received during the course of our interview). Although the Commission had succeeded in locating and arranging the release of nine missing individuals during the preceding month, it did not yet have reports on its remaining cases. More importantly, the Commission had thus far limited its activities to locating missing Salvadorans and had neither received nor initiated any requests for complaints against security personnel engaged in abducting, torturing or murdering citizens. When pressed, the Commission's Executive Director (a former prosecutor) indicated a willingness to accept and act upon requests for this type of assistance from members of the public. At our suggestion, the Commission also agreed to consider how it might use its official status to protect those private human rights organizations (Tutela Legal, Socorro Juridico and the privately-sponsored Human Rights Commission) from the repeated harassment and arrest and murder of their staffs which have

made efforts to protect human rights extraordinarily dangerous during the past three years in El Salvador.

On balance, we came away from our meeting with the National Commission with respect for the dedication and intelligence of its Executive Director and the hope that the members of the Commission would, as they pledged during our meeting, not only assist families in locating missing relatives but also solicit new "clients" from all sectors of the society (including political prisoners) and pursue vigorously all evidence of official misconduct. It is, however, too early to know whether the Commission will -- or will be permitted to -- carry out these pledges.

We do suggest, however, that the Commission be given the additional power to subpoena documents and compel testimony from witnesses within any branch of government -- including the security forces -- in order both to assist it in locating disappeared persons and, more importantly, in investigating abuses by military personnel. At the same time, the Commission should be required to publish a quarterly report of its activities and to include within that report the results of all such investigations.

4. State Department Certification

Although the focus of this Report is the criminal justice system in El Salvador and not the legality or wisdom of United States policy toward that nation, it is simply not possible to conclude this Report without some reference to Secretary of State Shultz' Certification, dated January 21, 1983, that the government of El Salvador has satisfied the several conditions specified in Sections 728(b) and (d) of the International Security and Development Cooperation Act of 1981 and Executive Order No. 12163, as amended. These provisions require that, as a condition to continued military and economic aid to El Salvador, the Secretary certify, among other things:

"(1) that the Government of El Salvador is making a concerted and significant effort to comply with internationally recognized human rights; [and]

"(2) that the Government of El Salvador is achieving substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens."

As this Report makes clear, the conclusion is inescapable that, whatever the intentions, whatever the exhortations, whatever the directives, the slaughter of civilians by security forces goes on at a monstrous rate

and, thus far, there is no evidence that a single member of these forces has been convicted or sentenced in any case involving the murder or torture of a citizen labeled "subversive" by the security forces. Under such circumstances, and with 30,000 or more dead and thousands more tortured or disappeared at the hands of government forces, if the incidence should decline to "only" 5,000 killed a year, it suggests a decline in available targets rather than an increase in humane behavior or attitude.

In terms of the Secretary of State's certification, either the government of El Salvador controls its security forces or it does not. If it does, it is impossible to describe that government as "making a concerted and significant effort to comply with internationally recognized human rights." If it does not, then the government has not achieved "substantial control over all elements of its own armed forces, so as to bring to an end the indiscriminate torture and murder of Salvadoran citizens." In either event, on the basis of the largely undisputed facts set forth above, it is clear that the Secretary's Certification is unwarranted and unsupportable.

The Certification is thus, in our judgment, plainly inconsistent with United States law. Yet its greatest

negative impact may be in El Salvador itself. For by denying both the meaning and intention of United States law in favor of current policy objectives, the Secretary has reinforced the conviction of El Salvador's security forces that, even for the United States, the elimination of "subversives" justifies defiance of the law.

Respectfully submitted,

Adrian W. DeWind
Stephen L. Kass

January 31, 1983

The CHAIRMAN. Thank you very much. I just have a few questions. Mr. Doherty, on human rights you have said that you oppose certification on the basis of the handling of this case that you have described. Some other aspects of the human rights situation in El Salvador do seem to be improving. And with respect to land reform, you said land reform program has recorded significant progress during the last 6 months, particularly in the last 3 months.

On that basis, are you with the exception of the atrocious handling in some cases, are you on balance saying that the certification, you support the certification with respect to land reform and human rights?

Mr. DOHERTY. These are, of course, both questions taken a bit out of the context of my full statement. With regard to human rights, I must tell you that many hundreds of campesino leaders and trade union leaders have been murdered and assassinated in the course of the past 3 years, most of them because of their attempt to claim their rights under the land reform process. Owners would bring in the treasury police, the local constabulary, or right-wing hit squads that were paid for those purposes, and simply kill the campesinos as a way of eliminating any possible claim they could make for their rights under the land reform.

We were presented by Rodolfo Viera, the head of the land reform agency, as well as the head of the union, even prior to his murder in January of 1981, a list of 800 names of campesinos, many of them murdered by persons associated with the very same army officers and treasury police officers and national guard officers for whom we now have eyewitness accounts of them having been involved in murdering our people.

In the last 6 months—and this makes one wonder whether or not the statement that maybe they are running out of people to kill might have some validity—in the last 6 months not one member of the leadership of the UPD and of their affiliated unions has been assassinated.

We think under the pressure of this committee long before the certification last July but rather in May and June, because you refused to appropriate an additional \$100 million, if you recall, of military aid; because of that, you sent the message to the El Salvadoran Armed Forces. And consequently the army, beginning in June of last year, started putting evicted campesinos back on the land and started helping the campesinos file for their rights using the boletos, or the applications for land.

The land reform today has many difficulties and has been applied to only about 40 percent of the potential recipients. The law expires next month. And if it is allowed to expire, that means the other 60 percent will never get their land. We are insisting that through the certification process that land reform be renewed until such time as every eligible campesino has the opportunity to apply.

But in the final analysis, yes, the performance of the Government in the field of land reform is somewhat better and has improved over the past 6 months. But there are still a lot of problems associated with it, and that is why we welcome the invitation from your committee to have the representatives of the UPD appear before your staff on Friday in order to explain some of those problems.

With regard to general human rights, previous testimony concentrates on the old body count type of analysis. This is unfortunate and

why we are making a different proposal. There can be no human rights, Senator, as long as those murderers and assassins whom we can identify are not brought before a judicial system and tried. Therefore it is all relative as to whether human rights is improving or not improving.

On straight body count analysis, there is no question about it. There are less dead bodies than there were heretofore. I guess less to that extent is better. But the truth is that the jails are full in El Salvador with leftist terrorists; by the State Department's account, 700 to 800. We do not know of any officers of any segment of the armed forces in jail right now awaiting prosecution for being members of the right-wing hit squads. That is a terrible imbalance, Senator.

The CHAIRMAN. It really is. And I think your very forceful message will be heard in El Salvador. The word will get down there, and I will certainly see that what you have had to say in this testimony is sent down to the embassies. It can be hand-delivered to the appropriate authorities in El Salvador.

Mr. DOHERTY. Thank you, Mr. Chairman.

The CHAIRMAN. Finally, do you believe that a military court of justice could better handle the cases of the land reform murders?

Mr. DOHERTY. Very frankly, I was very interested in the remarks of Mr. Kass, and while I am not a lawyer—I am the only one on this panel who is not a lawyer—we do have people working for us that are familiar with the law. In fact, our prime investigator, who is with me here today, a former FBI agent, has been legal attaché in many embassies. He is very familiar with the law.

We had our own lawyer, a counsel for the AFL-CIO and the AIFLD, go to El Salvador to undertake a study as to whether or not it would have been advisable to hire an "acusador particular." We think that this suggestion is ridiculous. You must pay money to have a public accuser, since in a murder case the Salvadoran state is not responsible for prosecuting the murders of their own citizens. That is another example as to why there must be judicial reform.

It is not just something that we find hard to believe as Americans. There cannot be any legal system in the world that is just where it is not the responsibility of the state to protect the rights of its citizens. Why be a citizen of a particular country if you do not get that protection of life from your government; that minimum degree of justice from your government?

We simply believe that it may take time to bring about the reforms. We hope they will come about. But in the meantime, the accused officers were on duty. Lopez Sibrian was on duty as a G-2 officer in the national guard intelligence section the night he went out and murdered our people. That is normally a military crime, and he could be court-martialed even if the civil judicial system does not work. That is No. 1.

No. 2, Captain Avila was on duty at the time that he provided his official weapon to Lopez Sibrian. We think that is also prosecutable on the basis of a court martial. And what we want is justice. We would prefer it under an acceptable system of civil law, but by the same token, if you cannot get it that way, we would like to remove these people from civilized society since we consider them to be dangerous to our

Salvadoran brothers and sisters that still live in that country. It is unreasonable that they can get away with just going out and blowing away anybody they want.

I might also add that Lopez Sibrian—it is not in my testimony but I will put this on the public record—was called back from another post to be the bodyguard for Mr. D'Aubuisson during the last political campaign. And he is now on duty reassigned to his unit.

The CHAIRMAN. We thank you very much. And we thank Sister Jane O'Grady for being here and for all of her backup work in this very important field. We are very appreciative.

Just a quick question, Mr. Posner. What immediate changes do you think are necessary to have a reasonably fair trial in El Salvador? What comes to your mind quickly as the things that are most essential that should be told to the authorities down there?

Mr. POSNER. With regard to the authorities in El Salvador they have to understand that there is a serious concern about this case and that they have to do a job. Presently they are not doing their job; they are not preparing for trial. They have no interest and they are afraid to pursue evidence. They really have to start from scratch and build a case. Thus far they have not done so.

One way that that can be done, Senator, is for U.S. Government officials both in the State Department and the FBI who have information about the case to make it available. The prosecutors are dealing with an incomplete record.

The CHAIRMAN. Thank you.

And, Mr. Kass, you have made some recommendations. What do you think the United States can do publicly or privately through private organizations to remedy the situation in El Salvador and implement your recommendations?

Mr. KASS. Very little. It is a very difficult problem.

May I just make two small additions to the questions that were just asked and then respond to that one? We spent more time thinking with lawyers, with judges, the President of the Supreme Court, with government officials, and with Ambassador Hinton about the very question you put just now than any other question: Should military courts be established, special courts martial, to try military people who torture and kill civilians?

At the present time Salvadoran law treats those acts not as military crimes but as common crimes, the same as anybody else committing a crime and subject to trial in the ordinary civil courts.

We believe that special military courts should not be used to try these cases. It is a tempting short-term idea. It is more likely, one surmises, that the military could accept and live with some military courts and military judges trying their peers. But the fact is the only thing holding that legal system together, and it is barely a thread, is the principle that all people there are somehow accountable to the same basic legal obligations and have the same duties under the law. It is not enforced, but at least the principle is written.

The people who care most about the judicial system pleaded with us not to recommend military courts. At least, they said, reaffirm the principle that when the military commits crimes, they will be tried by the civilian courts.

My own judgment is that they are right, that you cannot have meaningful military courts either unless the military accepts the principle that its people are subject to punishment. If they accept that principle, then it ought to work in the civilian courts as well. We do think, though, the juries ought to be dispensed with, only for a 5-year period. It is a hard thing for an American lawyer to say give up the jury, but in the present case jurors really are subject to such direct intimidation that they cannot convict anybody. In 5 years let them come back, we would say.

Now, in Mr. Posner's case of the church women, there is a specific recommendation that I think the United States could make and could fund, if necessary, though that might have to be done in some indirect way. The prosecutor's office does not have the ability or the resources to do the kind of job that should be done. A private attorney will not do it in the form of an *acusador particular*. There is no private attorney in that country that will take that case for any amount of money. Life insurance premiums would consume it at once.

What could be done, though, is that the prosecutor general's office could establish a special prosecutor, a public special prosecutor responsible for this case with the funds to carry out research and analysis and investigative reports and the like.

Somehow, if they found the funds to do that and assigned and hired on a short-term basis the equivalent of Archibald Cox or some first-rate special prosecutor down there to really do a job, they could go about their business.

The larger question, Senator, I do not know. I am very sensitive to reactions to comments made by one of the earlier panelists this afternoon. This is ultimately their legal system.

Ambassador Hinton asked us whether it would be useful to have a group of American lawyers or criminal justice people come down and work with them to develop their system. I think probably there is little we can do. We can help and we can respond. But they know how to do it if they want. They know how their laws work. They know how their systems work.

We have made some very specific recommendations. You could include them in the certification to some degree. I would be happy to work with your staff on identifying the particularly important ones. But it is up to that country to decide to create its own legal system and have it work.

The CHAIRMAN. Thank you very much.

I am going to ask Senator Pell if he would be good enough to chair the end of the hearing. He had to go for a telephone call right now.

So why do we not start right in, Senator Dodd, with your questions. I want to thank both you, Senator Dodd, and Senator Pell, for staying with us throughout the day on this very, very important issue. And my particular appreciation to this panel for being the anchor panel. It has been a long day, but we are very grateful for this windup, which is a powerful windup for these hearings and gave us a tremendous amount to think about. Thank you very much.

Senator Dodd. Mr. Chairman, I know we all thank you as well. You have stayed here all day as well.

The CHAIRMAN. May we give you the symbolic gavel?

Senator DODD. No; I will not take it. God knows what I would do with it. [Laughter.]

The CHAIRMAN. We will give it to him anyway.

Senator DODD. Thank you, Mr. Chairman, for being here as well and having such a strong interest in the subject and for being so fair as well on these matters that have taken up so much time of this committee over the past couple of years.

Bill, this is a new twist. I suppose the hottest news of the day, as far as I am concerned, is your testimony. This is a major turn of events. The AFL-CIO up to now has consistently supported certification, during the last two certifications, anyway, with some modifications. You have always been balanced in your viewpoint, but have always taken the position that on balance certification was proper, at least in January and July.

And this is the first such instance of the three we have been through that the AFL-CIO has taken a different point of view, again a balanced point of view. You do not indict the entire process, but rather those elements where you think there has not been progress, and I gather as a result of that have concluded that at this juncture it would be unwise to proceed with military assistance.

As you pointed out, I met with many of the—I think with all—of your representatives who are here. I look over the group there in the back, and I think every one of them were included in that meeting we had late one evening in San Salvador. And I welcome them as well to this process.

But I am a little perplexed, I have to be honest, because I asked them. I made them all my Senate advisers, as they will remember. We sat around and I said, I am hereby designating you as Senate staffers, and I want you to advise me on whether or not I ought to approve certification.

I do not know if those of you who are sitting there will remember the question that I posed. But the response, and I did not hear any dissent, was that they would advise me to support certification.

Is there some disagreement between the AFL-CIO and your counterparts with regard to that piece of testimony?

Mr. DOHERTY. No. As a matter of fact, I was told that you did indeed ask them that question, and that is the way they replied. Their statement is here.

First of all, it is difficult for them to answer not knowing all of the conditions of certification, and they did not know at that time. Since then we have had ample discussion with them. We met again this morning as a matter of fact. We reviewed their statement and ours. They complement one another. They support our view. We support their view.

But, Senator, very frankly, they have to continue to try to stay alive in El Salvador, and it is much easier for me before this Senate with the full protection of my government as—

Senator DODD. I know.

Mr. DOHERTY [continued]. It is for you to say the things that we believe, and they have to be careful. Everyone of them sitting in this room are doing so very bravely in replacement of a leader who has already been assassinated since this whole reform process was first introduced in October of 1959.

Samuel Maldonado, the head of the UCS, replaced Jose Rodolfo Viera, who was assassinated along with our two representatives.

Senator DODD. You mean in 1979?

Mr. DOHERTY. You are right, 1979.

Senator DODD. I see.

Mr. DOHERTY. Francisco Zaldana is standing there in place of Felipe Zaldivar, who was assassinated in 1980. In other words, it is a very dangerous life they lead. And while they have been very careful, if you read their statement you will see that they not only agree with us in our position, but that they are calling for the reorganization of the judicial system. This is the UPD criticism of the court system on the basis of noncompliance with the national laws in regard to the prompt and faithful execution of justice in the matter of political prisoners as well as the punishment of those involved in the crimes committed against labor and peasant leaders.

So there is great support for the reform of the judicial system. The UPD leaders are the representatives of the majority of the Salvadoran people. And there is great support on their part for revision of their own judicial system, because they have families and they would like to stay alive and they would like to continue to do the things that are necessary to improve their lives in El Salvador.

So there is no difference between us, Senator. They will be here on Friday, and I hope your staff will be present to get their views first hand.

Senator DODD. Mr. Doherty, on the last page of your testimony you have a graph and a chart which lays out the progress that has been made under the agrarian reform program beginning in July of 1982 through December of 1982.

First of all Mr. Doherty, let me just ask you as a matter of information, all of those applications filed under 207 running down there—do you see where there is a division? Then you have total number of phase I properties. Do you follow me? Do you see where I am?

Dr. DOHERTY. Yes, I see it.

Senator DODD. All right. Everything above that, are those all three phases included in that information?

Mr. DOHERTY. No. The second phase is not operating at all.

Senator DODD. I understand that.

Mr. DOHERTY. Is that what you meant by that?

Senator DODD. No. But that is all under phase I then?

Mr. DOHERTY. No. That is 207 on the left-hand column you see—

Senator DODD. That is all phase I?

Mr. DOHERTY. You will see it indicated on the left-hand column, 207, which is phase III.

Senator DODD. I am sorry. All right, now I see it.

Mr. DOHERTY. It is indicated on the left-hand column.

Senator DODD. All right. Now, the statistic that I find, and I wish I had pulled this out earlier when Secretary Enders was here.

Mr. DOHERTY. I wanted to run up and give it to you at the time I was sitting there.

Senator DODD. I wish you had, because the two that really are striking is the December figure for applications for titles which is the good news that the administration cites as progress.

Mr. DOHERTY. Exactly.

Senator DODD. And it is progress. And I agree with that.

And then move down to definitive titles granted under Decree 207 as of December 1982, out of 49,000 to 50,000 applications, there have been 408.

Mr. DOHERTY. Right.

Senator DODD. That was 251 in July of 1982, and we are up to 408, an increase of 150.

Mr. DOHERTY. Right.

Senator DODD. And after all of this time, only 408 out of 49,000 to 50,000 applicants, I am hard-pressed to call that significant progress.

Mr. DOHERTY. The figure right above that, by the way, is even worse.

Senator DODD. Yes.

Mr. DOHERTY. The 32,000 to 34,000 is a movement of about 3 or 4 percent, whereas at least the others doubled.

Senator DODD. I raised that point with him. I pointed it out. Actually, they show that figure. They show a 2,000 increase in fact.

Mr. DOHERTY. Without going into great detail—because we can do that on Friday—let me tell you how that happens. First of all, we have been trying to make it possible for the campesinos to come in with their applications.

But what the Salvadoran administration has allowed under the new reformed ISTA and Finata in El Salvador is they permitted the owners to come in and challenge all those titles and they can just do it on an open-ended basis as long as definitive titles have not been issued. In fact, Finata has encouraged them to do it. And so, despite the fact that the campesinos have got their applications in, they cannot even get a provisional title because of the challenges that the owners have been encouraged to come forth with.

Senator DODD. What I asked that evening during the meeting, I asked the leadership to provide three or four specific points that they thought were problematical. That was one of them, that there was an open-ended timeframe in which the land owner could challenge the process. As long as he did not challenge then nothing happened. There were a couple of others. My point is, if you could get those to the committee I think it could be very worthwhile. I never did get them.

Mr. DOHERTY. We will make sure you get them.

Senator DODD. Let me also raise another point with you. This morning with Secretary Enders I raised the concern about the moneys that have been paid out under phase I, some \$78 million in cash and bonds, and some \$3 million paid out to land owners under phase III. There is a significant disparity in the quantity of land under phase I and phase III. Phase I involves a lot more land, about 5 to 1 of potential acreage.

But, even so, that is a tremendous disparity. What is the reason for that?

Mr. DOHERTY. I think your suspicions are legitimate. First of all, I think you raised a good question. I think the presumption is that the big guys, the former members of the oligarchy, under phase I are making sure they get taken care of first. I will put it right out there. That is the implication, and thus the smaller landholders that are affected under the phase III aspect do not have the kind of political pressure to bring to bear. That is one reason.

I think that could be documented, but I do not want to say that without some further analysis. But I agree that your implication is a fair one.

Second, I think also that another reason for the disparity is that there are so many, many more owners. You know, we are talking about a phase I of 328 owners, where as we are now talking in phase III of an owner for each title application. That is approximately 49,000 owners that we are talking about. Many of them are much less affluent and they do not own apartments on Brick Hill Avenue in Miami and do not have bank accounts, unnumbered, in Switzerland and they, therefore, try to hold on to what they have. Because of their sheer numbers and more moderate financial worth there is more resistance on the part of the owners in phase III.

Senator Dodd. Thank you for your testimony, and I commend the AFL-CIO for its position. I should say, because you and I have been at loggerheads for the last 1½ years, and I have always found you to be very balanced, though we have disagreed a couple of times.

Let me ask both of our attorneys here: one of the concerns that I have is that we are trying to pose almost an Anglo-Saxon judicial process in an area where Napoleonic codes seem more appropriate. Would it not make more sense maybe to try judicial reform along a Napoleonic code system rather than an Anglo-Saxon approach? There are significant differences, in fact, more of a tradition in Latin America to embrace a Napoleonic code rather than the Anglo-Saxon.

Mr. Kass. Senator, that is a very real problem and our statement indicates our own consciousness about it. I think you are right to be sensitive to it.

All Latin American legal systems are based on the Napoleonic code rather than the common law system of England and the United States, except that there have been certain aspects of our criminal justice system which have been grafted onto the Napoleonic code in the criminal area—habeas corpus and the jury system.

But, as I indicated, the jury system has not worked well, though it should not be discarded permanently. But it is not working and, indeed, it is a problem at the present time.

I think the recommendations we have made are intended to be carried out in a civil law context. That is the reason why I resist Ambassador Hinton's suggestion that we spend some money and get a bunch of U.S. legal experts down there to redraft this. It will not work. It is not appropriate.

It has to be drafted and carried out in a way that it reflects the Salvadoran legal tradition. I do not think that is the problem. There are some institutional reforms that should be carried out in order to centralize responsibility. There is a strictly technical problem of creating an institution that is fully responsible for prosecuting the cases of security personnel abuses.

But the single most important thing that I think has to be done is the recognition by the military that it is subject to the law. Without that, all the institutional reforms will just be window dressing.

Senator Dodd. Let me ask you this: Wouldn't it make more sense—a lot of us have been suggesting that some other nations become involved in this overall process. We are involved at every level and, in fact, there are obvious reasons why in January there were so many

down there. But it can take on a circus atmosphere and I say that with all due respect to the groups who went down and worked very hard and very seriously as well.

I think to call it a circus, as some did, is a mistake, because the interests there were profound. But might it not be a good idea to involve in the international arena legal experts who are more familiar with the Napoleonic code, given the fact that the legal education of the judges, the attorneys, the others in El Salvador, is with that as a background? Which country would you recommend? Which country of the Latin American nations has a judicial system that would warrant duplication or would warrant copying to some extent and has a present system that is worthwhile to look at?

Which of those would you recommend?

Mr. KASS. Well, let me say I agree with your comment. I absolutely agree that that is the approach that should be followed. For my money, the country that would provide the best model in the case of El Salvador would probably be Costa Rica. Central America was once all one republic, and there has been tremendous movement, interrupted in the last 10 years, toward reestablishing that sense of an integrated commercial and legal entity.

Costa Rica has taken the lead in that movement and has the best-functioning legal system within the Central American countries.

Senator DODD. If they had taken up El Salvador's offer, there would be the 51st State. They offered to become a member of the United States in the 1820's.

Mr. KASS. We do have some principles of due process of law which might have been usefully implemented.

Senator DODD. Costa Rica?

Mr. KASS. Costa Rica and also Mexico. Mexico, which is close and which also has a marvelously developed legal system which has produced the most significant legal writing and institutional reforms.

But again I say to you the problem is not merely or primarily what is written on the books. A lot of Salvadoran laws are good, but Costa Rica and Mexico, and probably Venezuela, would be good countries to participate in the process, if you could get them to do it.

Senator DODD. Mr. Posner, I know you have a particular interest, obviously, in the case of the churchwomen, but I would like you to comment on those two questions.

Mr. POSNER. I would concur with Steve. I would just add one thought. It seems to me that we have been talking all day about very basic questions which any legal system has to address. Whether or not a member of a security force who has violated the law can be brought to trial is a basic concern. Under any system there needs to be the will to follow the law. There is absolutely no indication thus far in the case I have followed closely or in any others, as far as I can tell, that the military commanders of El Salvador have the will to punish their troops before civilian courts and impose discipline.

That is a basic point. It is not complicated and I do not think you need a lot of legal expertise to understand it.

Senator DODD. I agree with you. I am just looking at how we can get others involved in this.

Mr. KASS. If you would introduce it, Senator, as part of the negotiating process which you commented about during the first question-

ing period, and if that process were to involve other nations and some kind of a consensus were reached, particularly as part of a negotiated solution on political conflicts, then I think you might well find an opportunity to carry that out.

Senator DODD. Again I thank you and I commend all three of you, and you, Sister, as well as being part of the panel. I thank you and I yield.

Senator PELL [presiding]. Thank you, Senator Dodd.

I have a particular interest, as Mr. Posner knows, in the nuns because there so many Maryknoll connections with my State. And, as I mentioned earlier in the hearing, we had about 40 hours in which the building in which my State office is located was occupied by nine women, including seven nuns, and I commend them for the intensity of their feeling and only hope we will eventually find who the murderers were.

Today I asked Mr. Enders some specific questions and he is going to reply in writing, and they are very specific in nature and the answers will be of help. I hope they will be of help to you, but I am wondering if you could enlarge a little on what you base your findings that higher-ups were involved in the murders.

Mr. POSNER. Senator, there are several points. One is a statement in the record by the court now by one of the members of the National Guard, a man named Cesar Valle Espinoza. He testified that on the night of the killing he was told by the ring leader, Colindres-Aleman that they had superior orders to pick the women up. It is a simple statement, but it is important.

He testified in August 1982. Since then, there has been no effort to pursue this issue, or to ask him further questions. His statement at least suggests the possibility of higher orders. If you take his statement and consider other information we gathered during our visit based on a number of discussions we had. The issue of higher orders is far from resolved. In my written testimony I include more information on this point.

There was, in the period of 1980, a tremendous antagonism between the church and the army, particularly in Chalatenango, where the two Maryknoll sisters were working. During that period, there were a number of threats directed against the church, specifically death threats around the time they were killed.

Those leads have never been investigated and it was our feeling, based on our conversations was that this antagonism between the church and the army suggests a motive for the killing. The fact that there was a death threat on the day the women were killed and that it had their name on it, and that a member of the church staff was handed it by someone who said we are going to begin tonight—and in fact they were killed that night—suggests evidence that needs to be pursued.

We are not saying and have never said that we have definitive evidence of higher orders. We are simply saying there is enough evidence in the record so that any intelligent, competent, committed prosecutor would follow it up, and this has never been done. I am afraid that when Secretary Enders and others in our Government come here and say the overwhelming weight of the evidence suggests

otherwise they discourage the Salvadoran authorities from pursuing these leads.

Senator PELL. We have some pretty good investigative journalists. Have any of our Spanish-speaking journalists gone after this evidence?

Mr. POSNER. Some of the evidence that I am describing was developed by journalists over the course of the last 2 years. There is a limit as to how much a journalist can do. People in El Salvador are terribly afraid of becoming involved. However I believe that the evidence is there and if a competent authority from the Government of El Salvador wants to pursue it, I think that they can probably find more out.

In a period of 10 days we were able to find out quite a bit.

Senator PELL. The problem here really is, if we really think the authorities in Salvador are responsible for the murders and they are still the authorities, they are not going to facilitate your efforts in this regard.

Mr. POSNER. That is certainly true, unless there is significant enough pressure from this Government to cause them to change their attitude, and thus far that has not been the case.

I would add, Senator, that I was concerned this morning also, as you spoke with Secretary Enders, about the polygraph test. One of the things that concerned me when I was down there was the lack of information about those polygraph tests. These tests are the basis of the State Department's contention that the overwhelming weight of the evidence suggests no higher involvement. However those tests are only in the FBI's hands in Washington. The Embassy had never seen the tests. I am talking about the graphs and the list of questions that were asked in the course of each polygraph test.

The prosecutors had never seen them and the judge did not even know they existed. So we were operating in the dark and everyone with whom we talked seemed to have little or no interest in pursuing this evidence. They all said to us, "If you are interested, you pursue it on your own."

Senator PELL. I think this is an interesting subject and I would ask you to pursue it with our staff because it may be that relations between the legislative and the executive branches would warm up to the extent that we would have access to it. I cannot read a polygraph test, but maybe we have people who can. But it is an interesting thought.

Mr. Doherty, I wanted to touch on one point you raised, and that is this question of killing the leaders. I think we all know that in any community in any society there are large numbers of followers and very few leaders, whether it is in labor, government, business, whatever it is. And when you have knocked off a good slug of your leadership, it will take a long while for those sentiments to again rise.

And I am just curious. Is this reflecting your views, or do you feel there is still ample democratic leadership left in that country, or have they been knocked off for a while?

Mr. DOHERTY. I am continually amazed at the courage, the integrity, the honesty and the yearning for democracy on the part of the leadership of El Salvador, and not only in the labor movement. I have met

many political leaders of many political parties, and, frankly, of the centrist parties, which seem to be getting the upper hand right now.

And, as you know, hundreds of Christian Democratic mayors have been assassinated. More come forth, as in the case of labor leaders, campesino leaders, political leaders, and business leaders. In a terribly violent society maybe they have accustomed themselves to the violence, but they are very brave and persevering people, and I really believe that they are going to eventually win out because of their ability to persevere.

Senator PELL. How do you account for the fact that the majority of the people voted for the conservative?

Mr. DOHERTY. Well, I think there are several reasons. First of all, the majority did not "vote conservative." The largest vote was obtained by the Christian Democrats, with 40 percent. They were short by seven of gaining an electoral majority in the Constituent Assembly of 60. A good portion of the people did vote for conservative parties, but they were misled.

The Arena Party and Mr. D'Aubuisson campaigned on the basis that he was in favor of the land reforms. He deceived the people, because the first thing he did after he became president of the Constituent Assembly was to attempt to abolish land reform with a decree. We think the next time they have elections that the workers and the electorate will remember that.

Second, he campaigned, as do many politicians nowadays, on a law and order platform. The campesinos are just as fearful of the left as they are of the right. Their fields are being burned. I will give you an interesting story about burning. Just let me take 30 seconds.

Brother Camacho is in the back of this room. He represents ACOPAI, which has about 43,000 members; 9,000 of those members are in the area of Berlin which, as you know, it was captured a few days ago. He explained that the army troops in the area went to the higher ground and allowed the guerrillas to come in. In the process of that whole action the ACOPAI had 9,000 of their campesino people that had to be evacuated because they were afraid of being killed by the guerrillas.

Camacho had to send in trucks. They are now in new refugee camps where they are trying to feed them. They do not know if when they do go back in the Berlin area (because eventually and very quickly the guerrillas will leave) whether they will find that their crops are going to be there, or whether they will have been burned out. And if they have been burned out, by whom—the guerrillas or the former owners.

So they have an equal degree of distrust in their hearts for both sides that are perpetrating the human rights violations. But yet they will go back in and they will persevere.

Senator PELL. Thank you.

Mr. Kass, is there a law school in each one of the five Central American republics now?

Mr. KASS. There is no law school, Senator, at the present time functioning in El Salvador. It was closed about 2 years ago following major disruptions and there is no adequate legal education going on.

There is a decent law school, a good law school, in Costa Rica. There are one or two law schools in Nicaragua. I do not know the quality of

the education they are producing. I do not know whether or not there is an adequate law school in Honduras and if there is one in Guatemala it is not producing lawyers who are having any impact in that country insofar as human rights are concerned.

I cannot tell you that there is any place other than Costa Rica where one can get a decent legal education.

Senator PELL. I was struck by one of your statements—that judges should not be elected but appointed.

Mr. KASS. That is correct, Senator.

Senator PELL. But then you state they are elected.

Mr. KASS. We are in the process of changing that, at long last, and judges to the court of appeals are now being appointed by the Governor pursuant to a non-partisan commission, somewhat akin to what we have proposed.

Senator, may I sound one note of caution with respect to the dialog that you and Mr. Posner had? It is all very well and good in the short term for your committee or for our State Department to impose significant pressure upon the Salvadoran authorities to prosecute the murderers of the nuns and the labor authorities. They certainly should be tried and convicted.

But we do have somewhat of a conflict, because what we are really talking about is the creation of a legal system that functions within that society. If the only way to get convictions is through direct, extraordinarily pressure brought by the United States, tied together with military aid coming right from this committee, that will only reinforce the conviction of the military authorities that it is all ad hoc, that there is no system of law or justice that makes any difference, that everything is a bargain with some powerful neighbor or some influential citizen.

So, while we should certainly insist that justice be done in these cases, we should not delude ourselves into thinking that we are helping to create a judicial system by securing convictions through that kind of an ad hoc and probably impermissible pressure in a foreign country's proceeding.

Senator PELL. A very valid point indeed. I thank all three of you for your testimony.

Our staff and we will be at your service and be willing to help if we can on Friday. Thank you.

[Additional questions and answers follow:]

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS
SUBMITTED BY SENATOR PELL

THE CASE OF THE CHURCHWOMEN

Question 1. Do you believe that the Salvadoran prosecutor has prepared the case properly?

Has the Fiscal General's Office, which has actual responsibility for investigation and for bringing people before the judge, adequately prepared the case? The lawyers for the families believe that the Salvadoran Government has not adequately prepared.

Answer. The Department of State held a meeting with the families and their legal representatives on February 1, 1983, to address their concerns following a recent trip to El Salvador by Mr. Ford and two legal advisors. Consequently, we are aware of the families' concerns regarding the preparation of the case, and are bringing these concerns to the attention of the Attorney General's office in El Salvador. We share the families' commitment to a full investigation and full

prosecution of those responsible for these reprehensible crimes. Adequate preparation will obviously be an important element of successful prosecution.

Question 2. The families of the churchwomen for understandable reasons have turned down the idea of a Salvadoran lawyer to represent them in the judicial proceedings. Why can't the Government of El Salvador appoint a special attorney to represent the interests of the state against the accused?

Answer. The case is being prosecuted by a government attorney. In civil and criminal cases, however, the Salvadoran legal system does provide for an "*acusador particular*" or a private attorney who would represent the families of the injured party, in this case the families of the slain U.S. churchwomen. The families have not yet secured the services of a private attorney, which under Salvadoran law can only be engaged by them.

Question 3. Who is responsible in the U.S. Government for coordinating the delivery of all the information known by the United States to the prosecutor in El Salvador?

Do you believe this has really worked in light of evidence that there is much information that the Salvadoran Government does not have?

Answer. The Government of El Salvador has requested the assistance of the United States Government, including the FBI, in the investigation of this case. The Salvadoran Government, U.S. Embassy in El Salvador, and FBI have spent countless hours investigating the case. The Embassy is responsible for delivering information obtained by agencies of the U.S. Government to the prosecutor in El Salvador. It has transmitted pertinent information on this case to the Salvadoran Attorney General's Office. What happens to that information and whether it is ultimately included in the formal testimony and evidence in the case is the responsibility of the Salvadoran Attorney General's Office and judiciary.

Question 4. The FBI was called in to investigate the case. What has happened to all the information developed by the FBI investigators? Why has the FBI not made the information available to the families?

I have been told that the FBI has not given the information to the Government of El Salvador. Isn't this what they were down there to do?

Answer. It is long-standing policy of the Department of State not to answer questions regarding the policies or practices of other Government agencies. This question should be directed to the FBI.

Question 5. What happened to the x-rays of the autopsies of the Maryknoll sisters Maura Clarke and Ita Ford? What happened to the various polygraph tests that were taken?

Answer. Upon the Embassy's initial inquiry, the Attorney General's office stated that the Hospital Rosales in Chalatenango had copies of the x-rays. Subsequently, the Hospital Rosales denied having the x-rays and said they had been returned to the Attorney General's office. We know that x-rays were taken during the autopsies of the two churchwomen, but we do not know where they are. The Embassy has again contacted the Attorney General's office and renewed its request as to their whereabouts.

Question 6. The report of the Lawyers Committee for International Human Rights reports that a former guardsman in the same unit as the accused, Dagberto Martinez, is now living incognito, under FBI protection in California. He reportedly has information regarding the involvement of superior officers.

Is it true that the FBI will not allow him to be questioned about the case? Don't you think it important that he be questioned?

Answer. Mr. Martinez's statement concerning his knowledge of the case, taken in the United States, authenticated and sent to San Salvador by an official of the Salvador Consulate in Los Angeles, is a matter of public record.

The other questions concerning Mr. Martinez and the FBI should be directed to the FBI. It is the long-standing policy of the Department of State not to answer questions regarding the policies or practices of other Government agencies.

Question 7. Sister Ita Ford was threatened by Col. Pena Arbaiza when she and Sister Maura Clarke worked in Chalatenango and lived near the military headquarters. A short time after the murders, Colonel Pena was transferred to Honduras as military attaché. Has he ever been questioned about the case? Has information developed from an interview been shared with the families?

Answer. Col. Pena Arbaiza was interviewed in November 1982, and the results of this interview have been shared with the families' U.S. legal representative. Col. Pena Arbaiza stated that to the best of his knowledge, no high official was involved in the murder of the churchwomen. He stated that he believes that the murder was committed by low level officers, acting on their own.

PEACE PROPOSALS

Question 8. Has the State Department responded to the latest peace proposal submitted by the FDR/FMLN to the Government of El Salvador in late October?

Answer. The United States favors reconciliation in El Salvador. The way to do that, we think, is to provide a process through which adversaries of the government can explore how to participate peacefully in political life within the framework of the emerging constitution and institutions of El Salvador. President Magaña began setting up such a means by establishing the Peace and Political Commissions.

If the FMLN-FDR favor reconciliation in El Salvador, they should say so. Otherwise, all you have is a foreign-supported insurgency operating mainly in the underpopulated areas of the country, and saying to the government "negotiate with me as an equal." I doubt if any government in the world could agree to that proposition. If the FMLN-FDR is ready to renounce violence and see its members integrated in political life, that would be different.

Question 9. It is being regarded in some circles as a serious effort to begin a dialogue with the government? What is your assessment of the proposal?

Answer. We did not consider it "a serious effort" at the time because it was pursued for propaganda purposes and because it was quickly followed with a military campaign.

Question 10. Mr. Ungo has been quoted as saying that the latest peace proposal would test the political will of the United States. What is your reaction to that statement?

Answer. The U.S. Government has stated its opposition several times to negotiations for power sharing. We have consistently supported national reconciliation within the democratic electoral process under conditions which would guarantee the security of adversaries to campaign openly.

Question 11. I have been told that there are elements within the armed forces as well as certain political factors that have reacted positively to these peace proposals. What is your understanding?

Answer. Our understanding is that the Government of National Unity did not believe the effort was serious.

SECRETARY ENDERS' RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

FEBRUARY 2, 1983

Question 1. Please describe what you perceive to be the relationship between the armed forces in its various branches and the "paramilitary" groups or "death squads"? Do military men control the "death squads" to your knowledge? How are these "death squads" related to the civilian right wing?

Answer. Paramilitary military groups, such as ORDEN, were officially outlawed by the Government of El Salvador on October 15, 1979. The junior officer coup which overthrew President Romero declared these groups illegal and purged over 150 officers associated with the far right from the military. The Salvadoran military high command maintains this policy. However, some elements of these groups and their sympathetic counterparts in the military and security forces illegally continue violent reprisals. These civilian/military groups are ad hoc and react violently when they perceive the need or the opportunity. While the activities of some of these groups persist, they are not condoned by most of the military or security force leadership nor most of the mid and junior level officers in the field.

Question 2. The certification document describes the Salvadoran criminal justice system as not functioning. Exactly what do you mean by this? How can you maintain that the human rights situation is improving when there is no mechanism for redressing grievances?

Answer. The certification document states that there is growing concern in the Government of National Unity for the revitalization and reform of the criminal justice system, which has not functioned effectively, particularly in prosecuting crimes associated with acts of terrorism for the violent right and left. This problem has been clearly illustrated by the case involving the murder of AIFLD advisors and by the fact that trials for political crimes have been rare. Clearly, further improvement in the human rights situation in El Salvador rests on the

ability of the Salvadoran Government to reconstruct an honest judicial system free of intimidation.

Since Ambassador Hinton's October 29 speech, in which he addressed the breakdown of the criminal legal system, Salvadoran attorneys, the press and the church have expressed their support for legal reform. The government is currently reviewing the status of the approximately 800 political prisoners detained under the State of Siege Decree 507 with the objective of releasing those where insufficient evidence of guilt exists. President Magaña has also requested the judiciary to analyze Decree 507 and to make recommended changes. Progress in legal reform will not come quickly because the chief obstacle to judicial effectiveness is the pervasive terrorism and intimidation of judges, attorneys and jurists which can only be alleviated as the security situation improves.

Question 3. What changes are necessary for El Salvador to have a meaningful system of criminal justice?

Answer. In order to put into place a meaningful criminal justice system, the following serious problems would have to be addressed: the disruptions caused by severe civil strife; acts of terrorism against judicial officials, especially at lower levels; inadequate police investigations; illegal use of public law enforcement agents for private interests; and rules of evidence and procedures which tend to discourage successful prosecutions. Moreover, a decline in the overall level of violence and an end to the guerrilla war would also be major contributing factors. The U.S. Embassy is cooperating with private groups in trying to assist the Salvadoran Government in addressing these grave problems.

Question 4. What precisely are Salvadorans doing to address this lack of adequate legal system?

Answer. The policies of the Government of National Unity, as set forth in the August Pact of Apaneca, are designed to bring about pacification, democratization and reconciliation within the body politic of El Salvador. Success in this would also affect their operations of the criminal justice system by providing the climate necessary for attacking the specific problems enumerated in Question 3 and getting the system operating once again. Of about 3,650 prisoners in the Salvadoran penal system (including 809 prisoners held under State of Siege Decree 507), fewer than 300 have been convicted. The rest are awaiting trial. With respect to detainees under Decree 507, President Magaña has ordered a review of the legal basis and procedures of Decree 507 with the objective of a quicker resolution of the cases. The recently established government Human Rights Commission is also engaged in activities which could contribute to a more effective criminal justice system.

Question 5. The certification document notes that most abuses of prisoners occur during *arrest*, not during detention. How do you explain this? What specific measures are being taken to curtail such abuses? Have the police and National Guard been detained or arrested for such abuses?

Answer. It is believed that most instances of torture are committed in clandestine detention cells by security personnel prior to turning the detainee over formally to the authorities for detention. The United States has repeatedly conveyed to ranking Salvadoran officials in the various security agencies our concern over the allegations of torture. There is some evidence to indicate that the performance of the National Guard has significantly improved in this regard. In the January 1983 Certification Report, the Department said that it had received information from the Salvadoran Government that 141 regular military personnel were under detention for abuses of authority, however, it is not known how many of these individuals have been detained for illegally mistreating prisoners. It is clear that additional efforts must be made to eliminate the practice of torture by Salvadoran security personnel.

Question 6. The coordinator of the Salvadoran Human Rights Commission is quoted as saying that the chief of the National Police (a member of the Commission) cannot be held responsible for the abduction of a citizen by the National Police in early December. What is the Administration's response to this attitude?

Answer. The Department has not seen the full text of the statement by the coordinator of the Salvadoran Human Rights Commission and thus is unable to comment on the specific incident alleged. However, the Department clearly believes that senior officers are responsible for ensuring discipline among their ranks and for seeing that violators are brought to justice.

Question 7. It is generally believed that the kidnapping of the FDR leaders in mid-October by the Treasury Police was done against the wishes of President

Magaña and General Garcia, but with the knowledge of Col. Francisco Moran, Chief of the Treasury Police. This argues against the contention that the government is in better control of its security forces. Please comment.

Answer. These FDR leaders were apprehended, detained and charged by the Government of El Salvador. Some information suggests that General Garcia, who was out of the country at the time of the arrests, was not aware of the initial apprehension and detentions. Both he and President Magaña later became aware of the detentions and have supported the charges against the accused.

Embassy officers visiting congressional delegations and other U.S. groups have visited the FDR leaders at Mariona Prison. They appeared to be in good health and indicated that they were not mistreated during their apprehension nor their confinement. They stated to Embassy officers that they received regular family and Red Cross visits.

The FDR is the political front group for the guerrilla umbrella group, the Farabundo Marti National Liberation Front (FMLN). The FMLN is attempting to seize power by force in El Salvador. These FDR leaders support that effort.

Question 8. The America Watch believes that "torture and murder continue to be routine practice among the Salvadoran military and security forces. . . ." What is your assessment of this specific point?

Answer. The U.S. Embassy in San Salvador has received some reports of torture by elements of the Salvadoran armed forces. It is not possible to establish the prevalence of torture because valid and systematic means for documenting cases does not exist. Some elements of the security forces engage in the use of psychological and physical coercion to extract information from suspected leftists, on some occasions on a prolonged and extreme basis.

The United States deplores any use of torture and we have made our concerns known to the highest levels of the Salvadoran Government when we have received information that indicates torture has been practiced.

Question 9. The present Minister of Agriculture in El Salvador is a member of D'Aubuisson's ARENA party. Campesino leaders complain that the Minister of Agriculture and appointed heads of ISTA and FINATA are in principle opposed to the land reform. In your estimation, has the Agriculture Ministry been supportive of the land reform program? Are campesinos justified in their comments that these agencies are foot-dragging?

Answer. The degree of support for the land reform programs by the Salvadoran agencies which implement the reforms can be seen by their actual performance. With respect to Phase III which is administered by FINATA, a subordinate entity of the Ministry of Agriculture, performance has been outstanding over the past five months (October 1982 through February 1983). Major indices of progress such as the number of small farmers who have title applications, provisional and definitive titles issued, and former land owners who have been compensated, reflect marked if not dramatic improvement. The Director of FINATA is an apolitical army colonel who has provided dynamic and innovative leadership to the Phase III program.

With respect to the Phase I program, progress has been particularly slowed by the civil conflict, but nevertheless it has been steady in such key areas as compensation and titles issued to cooperatives. The essential point on Phase I implementation is that agricultural production figures on the reform farms have now climbed back up to pre-reform levels and also compare favorably with national production figures. This reflects well on the performance of the Salvadoran Ministry of Agriculture as well as on ISTA, the agency with primary responsibility for implementing Phase I.

Progress is being made under both phases of the land reform, and this progress indicates that the leaders of the Salvadoran land reform agencies are fulfilling their responsibilities under the law, regardless of their political affiliations.

Question 10. What is going to happen in March when the present land reform law expires? What are the prospects for its renewal? Is there a danger that it will not be renewed or modified to a point where it is no longer meaningful?

Answer. On March 3, 1983, the Salvadoran Constituent Assembly voted 36-23 to extend Decree 207, the land-to-the-tiller program, until December 31, 1983. The Decree extending 207 also derogates Decree 6 and 11, which suspended Decree 207 for certain crop cycles.

The agrarian reform continues to be crucial in establishing economic and political equity in El Salvador. More than 20 percent of the arable land has been redistributed since commencement of the land reform program three years ago. Some 480,000 Salvadorans have benefitted from the agrarian reform. The ex-

tension of Decree 207 allows the progress to continue and more farmers and their families to benefit.

Question 11. There have been many discussions of amending the reforms, including the land reform. What areas have been identified as needing changes? Do the cooperative owners (new owners) agree with these changes?

Answer. Numerous changes have been proposed at various times with respect to the Phase I and Phase III land reform programs, particularly regarding technical elements, such as the titling process, land assessments, and land registry. No doubt, some of the changes are needed and should be pursued. However, we feel this is primarily the responsibility of the Salvadoran Government.

The new "cooperative owners" now have their own farmers' organization, FESACORA, and are fully able to participate and make their weight felt in working out appropriate changes and modifications in the program. The effective power of campesino organizations in the land reform program was evident in the role they played in the Constituent Assembly's decision to extend the life of Phase III until December 31, 1983.

Question 12. The certification document cites several major problems affecting the land reform program. What is the Salvadoran Government doing to address these? What does the U.S. Government contemplate doing?

Answer. The major problems affecting the land reform program as noted in the certification document, include security conditions, insufficient public financial resources particularly for compensation and production credit, the technical capabilities of cooperative management especially at the farm level, and the administrative capacity of the Phase I implementing agency, ISTA. There are no easy or immediate answers to these problems. Land reform programs are difficult and complex to carry out under the best of conditions, much less in the face of civil conflict. However, the Salvadoran Government is addressing all of these problems, notwithstanding the major constraints that exist.

Increased funding for landowner compensation is being provided; considerably greater attention is being given both by the government and the cooperatives themselves to upgrading farm management capabilities on the Phase I farms, and ISTA is now modifying its legal and administrative procedures to facilitate more rapid implementation of the land transfer process.

The U.S. Government stands ready to provide continued financial and technical support to the Salvadoran Government in its efforts to expedite and improve the implementation of land reform program, as we are now doing with financial support for production credit and technical assistance to various components of the land transfer process.

Question 13. Given the requirement of the certification that the Salvadoran Government demonstrate good-faith efforts to begin discussions with all major political factions willing to find an equitable political solution, can you describe the efforts of the present Salvadoran Government to engage in discussions with left-of-center elements?

Answer. The present Government of El Salvador has expressed on numerous occasions its willingness to engage in discussions regarding participation in elections with any group willing to eschew violence. The Magaña government has demonstrated its commitment to full participation by all groups in the democratic process by laying the groundwork for the climate which will make their participation possible. The Pact of Apaneca established the Political, Human Rights and Peace Commissions with this goal in mind. The Constituent Assembly is writing a new constitution, and established an electoral commission to oversee elections. The Human Rights Commission is charged with monitoring human rights in El Salvador and making suggestions for improving the judicial system. The recently established Peace Commission has already completed an amnesty law which will assist those wishing to eschew violence, and to participate in the upcoming elections, to do so. In addition, President Magaña, in announcing the upcoming elections, confirmed his governments commitment to establishing mechanisms to ensure full participation in the elections.

Question 14. Has the U.S. Government discouraged Salvadoran political leaders from engaging in dialogue with the FDR?

Answer. To the contrary, the U.S. Government supports the Government of El Salvador's policy regarding dialogue. The Government of El Salvador has expressed its willingness several times to participate in negotiations or discussions with the guerrillas regarding the means of participation by the guerrillas in free and fair elections. Most recently, President Magaña pledged to establish mechanisms for full participation in the upcoming elections. The Government

of El Salvador has said that it will not negotiate or discuss with the guerrillas regarding their participation in the government through a power-sharing arrangement that does not include the consent of those governed. To do otherwise would destroy the democratic process which began last March. The United States will not support negotiations on power-sharing because this would deny to the Salvadoran people their right to determine their own future.

Question 15. Is the military in El Salvador willing to permit civilians to rule? In particular, is the military willing to be a center or left-of-center civilian government that would entertain dialogue with opposition elements?

Answer. Undoubtedly, the military plays an important role in El Salvador. The military not only wages the war against the guerrillas, but is also active in supporting civic-action and reform programs, in particular the agrarian reform. As a result of these various political roles and the historical role of the military in governments throughout the region, the El Salvadoran military remains significantly involved in the political life of El Salvador. However, they are involved at the behest of the civilian government democratically elected in March 1982, and their role has been a supportive, modernizing one. The turnout for the March 1982 elections demonstrated that the Salvadoran people want their representatives to be elected, not appointed behind their backs. The military supports the populace in this desire, as was demonstrated by their role as guarantor of the March 1982 elections.

Question 16. What concrete accomplishments has the Constituent Assembly achieved to date that would demonstrate that Salvadoran political parties are able to work constructively to build a viable political process?

Answer. The Constituent Assembly elected in March 1982 is the first truly democratic national legislative body in the country's history. Despite the lack of experience in democratic institutions, the political parties in the Constituent Assembly are working constructively to build a viable political process. Members of various political parties cooperate and work closely in a number of commissions. For example, the members of the Political Commission, the Constituent Assembly committee drafting the Constitution; the Elections Council, which has affirmed the early date for elections (December 1983) and the Peace Commission, were appointed by the Constituent Assembly to represent various public interests and viewpoints in El Salvador. The Constituent Assembly made an effort in making these appointments to include representatives from all sectors of Salvadoran society—the private sector, church, labor and military. In turn, these commissions, as envisioned in the August Pact of Apaneca, signed by four political parties, are charged with creating mechanisms and conditions necessary for a viable political process. In addition, many political observers felt after the elections that a rightist coalition would dominate the Constituent Assembly and attempt to dismantle the agrarian reform. No such coalition emerged. Members of the political parties have transcended narrow parochialism and acted for the good of the country as a whole. A case in point was the extension of the land reform on March 3.

In several other instances, members of the Constituent Assembly have cooperated and compromised on many delicate issues, such as the successful January change in ministries. A respect and spirit for cooperation, consultation, and compromise are developing.

Question 17. Does not the abduction by security forces of leaders of labor unions and the Revolutionary Democratic Front between October 8 and 21, 1982, cast great doubt on the Salvadoran Government's commitment to political reform or its commitment to seek a political solution to the turmoil in El Salvador? Eight are now held in military jails, and at least six remain unaccounted for.

(a) What is the Salvadoran Government's explanation of this move against moderate political elements?

Answer. As stated in the report accompanying the Certification, the detention of the FDR leaders "dealt a setback to efforts for political reconciliation." As soon as knowledge of the detention reached Ambassador Hinton, he denounced the act. The Department of State quickly supported the Ambassador's denouncement. Subsequently, the Ministry of Defense moved quickly to ensure the protection of those abducted. The spokesman of the armed forces publicly announced the names of those arrested and stated that they would be held under the procedures set forth under Decree 507. They claim to have evidence implicating some of the detainees in supporting the guerrillas. While the case was a setback in terms of the efforts for political reconciliation, the overall handling of it, following their arrest, and the acknowledgement of other detentions, suggests some

progress in greater respect for established legal procedures. In the past, similar arrests might not have been publicly acknowledged at all and those detained would have been listed as disappeared. The government has denied having any knowledge of the six labor leaders whose whereabouts are unknown.

(b) This incident seems to support the contention that the government is not interested in working with the nonmilitant opposition to seek a political solution. What is your analysis of this incident?

Answer. As we have already stated, this incident was a setback in the process of reconciliation. However, the Peace Commission offered a draft amnesty law on March 17. The Peace Commission is charged with assisting the process of reconciliation by providing a comprehensive amnesty as well as other measures for the security of anyone who wished to participate in the country's democratic process. President Magaña, in his March speech announcing the upcoming elections, stated that guarantees for the full participation of all parties will be provided.

(c) In light of this incident, how do you expect elements of the FDR opposition to return to El Salvador to dialogue with the government on a political solution?

Answer. An informal amnesty for guerrillas has been in effect and some 200-300 guerrillas and non-combatant sympathizers have actually turned themselves in and have been relocated by the armed forces. The Peace Commission has formulated and submitted to the Constituent Assembly an amnesty law with measures for protecting persons wishing to take advantage of the amnesty. President Magaña recently announced that mechanisms would be established to guarantee full participation, by those so desiring, in the upcoming 1983 elections.

(d) How do you expect the government's offer by amnesty to those guerrillas who lay down their arms to be confidently accepted in light of this incident?

Answer. President Magaña, in his announcement of early elections, stated the following "Our peace program includes respect for human rights and an amnesty to facilitate the work of the Peace Commission to create the favorable conditions necessary for elections, by establishing mechanisms that will guarantee full democratic participation." The Peace Commission is putting the final touches on a draft amnesty law. After approval by the Constituent Assembly, the draft amnesty program will become law. It presently offers mechanisms for the participation of those wishing to eschew violence.

(e) How can open campaigning be conducted for the next elections in an atmosphere created by this event?

Answer. The question of establishing the right conditions for campaigning for the next election was addressed by President Magaña on March 6 when he announced the decision to hold Presidential elections in 1983 rather than in March 1984. In that statement he stated: "Our peace program includes respect for human rights and an amnesty law to make it easier for the Peace Commission to create the favorable conditions necessary for elections, by establishing mechanisms that will guarantee full democratic participation. In fulfillment of its obligations, it shall undertake the activities necessary to incorporate all political sectors into the democratic process. By working closely with the Consejo Central de Elecciones (Central Council on Elections), with the collaboration of the Organization of American States and the cooperation of friendly countries, the Peace Commission will contribute effectively to the preparations and impartial conduct of an election that will ensure the aforementioned objectives."

Question 18. Why has there been delay in the announcement of a peace commission which is to review proposals for an amnesty, dialogue and political reconciliation? Can President Magaña overcome conservative opposition?

Answer. The Peace Commission was formally established on February 28. It is the last of the commissions to be formed under the terms of the Pact of Apaneca, a basic plan for El Salvador developed by agreement of four political parties on August 3, 1982. The Political and Human Rights Commissions were established first.

The Political Commission appointed three individuals with distinguished public records to serve on the Peace Commission. The Pact of Apaneca envisioned the close cooperation of the Peace Commission and the Human Rights Commission in proposing an amnesty law and in studying measures to strengthen the judicial system. The Peace Commission has already delivered a draft amnesty to President Magaña on March 17.

The government that is emerging in El Salvador is one marked by consensus and compromise among the parties. While this might not be the form of government that achieves rapid results, we believe that its decisions are truly democratically-based and they will have lasting long-term effects.

Question 19. Can you assure us and the families of American citizens murdered in El Salvador that the U.S. Embassy has exercised all of the influence at its command to persuade Salvadoran authorities to leave no stone unturned in these cases and to pursue responsibility as far as possible?

Answer. The Department of State and the U.S. Embassy in El Salvador remain committed to seeing that all those responsible for the murders of American citizens are brought to justice. We have repeatedly made our commitment known to the highest levels of the government and military in El Salvador. To this end, the Department of State, the U.S. Embassy in El Salvador, and upon the request of the Government of El Salvador, the FBI, have assisted the Salvadoran authorities to pursue allegations and leads, even those based on accounts from questionable sources. We will continue to assist the Salvadorans, and also continue with our own efforts, to pursue leads and allegations no matter where they may lead.

Question 20. In pursuing the case of the churchwomen's murders, has the Administration pressed for exploration of the clues raised by the families or relied solely on the polygraph evidence?

Answer. The Department of State and U.S. Embassy in El Salvador have pressed for exploration of clues and leads raised by the families. We have not relied solely on the polygraph evidence. On the contrary, considerable efforts have been devoted to pursue all allegations and leads from the families and other sources.

Question 21. Why have you not pursued these clues?

Answer. As stated in the previous answer, the Department of State and the U.S. Embassy in El Salvador have pursued all allegations and leads, from various sources, in the case of the four American churchwomen. We will continue to do so, no matter where they may lead.

Question 22. Why has Sergeant Martinez in California not been brought in for questioning?

Answer. At the request of the Government of El Salvador, Mr. Martinez' statement concerning his knowledge of the case was taken in the United States in February 1982. It was authenticated and sent to San Salvador by an official of the Salvadoran Consulate in Los Angeles.

Question 23. Why has the judge in this case denied knowledge of available polygraph tests and refused to enter this material into the records of evidence in the trial?

Answer. We are not able, of course, to address the motivation behind the judge's remarks. We do know that there are problems under the Salvadoran legal code with the introduction of evidence not gathered directly under the judge's supervision, as is the case of the polygraph examinations which were conducted prior to the referral of the case to this judge. We can only assume that the prosecutor may not have told the judge of this evidence in the belief it was not admissible. There may also be difficulties with the admission of the polygraph evidence *per se*. (As you know, polygraph evidence is not admissible in United States Federal courts.) However, it is our understanding that the judge in this case is now aware of the polygraph tests and may choose to call, through the letters rogatory procedure, for their inclusion in the record. The judge has not refused to enter this material into the record. The stage of the trial in which he may call for this evidence has not yet arrived.

Question 24. The churchwomen's families have decided not to have a personal counsel (*acusador particular*) at the trial because they feel the judicial system will not permit full investigation and they cannot find a lawyer willing to take the case without putting his life in jeopardy.

(a) Do you believe the case of the churchwomen's murders will receive even adequate review if the families are not represented?

Answer. We have urged the families to be represented at the trial by their own personal counsel, as Salvadoran law allows. We believe that the *acusador particular* would substantially assist in ensuring that justice is done and would also serve to keep the families fully informed in this case in a foreign legal system.

(b) What efforts have been made to find a lawyer to represent the families?

Answer. The U.S. Embassy in El Salvador has repeatedly offered its good offices to the families in trying to secure the services of a competent Salvadoran

lawyer. The legal representatives of the families have visited El Salvador twice to interview potential *acusadores*. The Embassy fully assisted them by securing appointments for the legal representatives with the Attorney General and his staff, the Embassy's legal advisor and various Salvadoran attorneys. In addition, we have consulted with the legal representatives and the families concerning the hiring of an *acusador* at three meetings at the Department of State in Washington. We have advised the families in the strongest terms to hire an *acusador*. We remain willing to assist the families in any way possible.

(c) What is your reaction to the families' decision not to have a personal counsel? Who will represent the prosecution in this case?

Answer. The decision of the families not to hire an *acusador particular* at this time is regrettable. We have strongly urged, and sought to assist the families, to hire an *acusador*. We believe that the *acusador particular* would substantially assist in ensuring that justice is done by fully representing the families' concerns, and would also serve to keep the families fully informed in this case in a foreign legal system. The case is being prosecuted by a government attorney.

Question 25. There are strong allegations of corruption and bribery in the case of the murders of the AIFLD workers. What evidence have you that the judge who dismissed the case against Lt. Lopez-Sibrian was threatened or "bought?"

Answer. The Embassy and the Administration continues to make known our deep concern for a thorough administration of justice in the AIFLD murder case. The President, during his October meeting with President Magaña, stressed the need to prosecute all those implicated in the murders, not just the confessed gunmen.

We share the Embassy's view, that based on the confessions and other available evidence in the case, the two judges that dismissed the charges against Lopez Sibrian were either bribed, intimidated or both. The U.S. Government continues to press for the detention of Lopez Sibrian and a thorough investigation into the case.

Question 26. Is the U.S. Government in any way assisting El Salvador to locate Eduardo Avila, also accused in this case?

Answer. Eduardo Avila fled El Salvador. His whereabouts are unknown. The U.S. Government is prepared to assist the Government of El Salvador in locating Eduardo Avila should the Salvadoran Government believe such assistance would be useful.

Question 27. What is the status of extradition requested for Hans Christ? Is the case against the individual now dropped and his name cleared?

Answer. The extradition of Hans Christ to El Salvador was requested by the Salvadoran Government in April 1981. In June, 1982, a U.S. Magistrate in Miami dismissed the extradition proceeding against Christ following an April 13, 1982, El Salvadoran judicial order suspending further criminal proceedings against him. The suspension order was based on the grounds that insufficient evidence had been developed to implicate Christ in the murders.

Under Salvadoran law a criminal investigation may only be re-opened within 1 year of a suspension decision and upon petition by the Attorney General if he presents new evidence implicating the accused in the alleged offense. In September 1982, the El Salvador Attorney General formally asked the court to re-open the case against Christ. A decision by the court is still pending.

Question 28. The Sullivan family tells a rather alarming story of U.S. official lack of attention to the concerns of the Sullivan family and even to clues provided by the family.

(a) Given the number of murders of Americans that occurred in El Salvador at that time—December 1980 and January 1981—why did the Embassy not pay more attention to this disappearance?

(b) Three certifications now have stated that all leads in the Sullivan case have been followed up. The Sullivan family's story of this case seems to refute that contention. Can you explain these discrepancies?

Answer. Mr. Sullivan's family announced on February 25 that a medical examiner engaged by them had identified Mr. Sullivan's body.

The following is a brief description of the efforts of the Department of State, and the Embassy in San Salvador, that resulted in the location of John Sullivan's body.

In June 1982, an anonymous letter to the Embassy reported that an unidentified body, which had been buried near San Salvador at Nuevo Cuscatlan, might be that of Mr. Sullivan. The Embassy requested that this body be exhumed for

examination; this was done in July 1982. Although circumstantial evidence supported the possibility of the remains being Mr. Sullivan's the condition of the remains made normal means of forensic identification impossible. After examination, the Salvadoran medical examiner concluded that the remains were not those of Mr. Sullivan, and they were reburied.

The Department of State, however, had the Salvadoran medical examiner's x-rays of the remains reexamined in the United States and learned that the findings of the Salvadoran medical examiner might not be correct. The Sullivan family then engaged R. Frederick Zugibe, whose comparison of the x-rays of the remains with those previously taken of John Sullivan indicated a high probability that the remains were indeed Mr. Sullivan's. Dr. Zugibe asked for an opportunity to examine the actual remains before making a final identification. The Department of State concurred with the request of Dr. Zugibe and the Sullivan family that the examination of the actual remains take place in the United States. Efforts to arrange for the re-exhumation of the remains and their shipment to the United States were delayed by Salvadoran laws that prohibit transferring unidentified remains out of their country. It was only after extensive review of the law that El Salvador's Supreme Court could arrange a legal transfer of the remains to the United States for positive identification.

The record of the Embassy in San Salvador, and that the Department of State, is clear. From the moment the Embassy learned of Sullivan's disappearance on the evening of January 4, 1981, every reasonable effort was made to locate Sullivan. It was not an easy task. Sullivan disappeared without a trace. The Embassy followed up on all leads which it received, most of which were frustratingly unproductive.

Question 29. Have you subsequently made any effort to interrogate individuals who have come forward since the location of the body now thought possibly to be Sullivan's?

Answer. The Embassy has recently established direct contact with the person who wrote the anonymous letter directing our attention to the Nuevo Cuscatlan remains, which proved to be those of Sullivan. The Embassy will pursue all information it received from this person.

Question 30. What efforts are being made to bring the prospective body back to the United States? Is the Embassy making a serious effort to provide assistance in this instance?

Answer. Mr. Sullivan's body was returned to the United States on February 19, 1983. The Embassy provided assistance in bringing the remains to the United States.

Question 31. Given that three Salvadoran soldiers apparently indicated that they shot Michael Kline and that powder burns on the body indicate Kline was shot at close range, why are the three soldiers still at large and still on active duty? If three soldiers appeared before authorities in the U.S. Army and said they had shot an individual, would they still be on active duty?

Answer. The three soldiers involved in the shooting of Michael Kline were placed in detention at San Francisco Gotera by military authorities on March 1. On March 11, the Defense Minister Jose Guillermo announced that the three soldiers had been turned over to civilian courts on suspicion of culpability in the death of Michael Kline.

Regarding actions that the U.S. Army would take under similar circumstances, we suggest this question be addressed directly to U.S. Army authorities.

Question 32. What specific representations has Ambassador Hinton made to the Salvadoran authorities on the Kline case? Please enumerate.

Answer. On November 30, Ambassador Hinton met with the Salvadoran Minister of Defense to inform him of inconsistencies between the soldiers' account of Kline's death and the autopsy report. Ambassador Hinton asked that the matter be investigated and the guilty be prosecuted. A formal diplomatic note detailing the inconsistencies to the Salvadoran Foreign Minister followed on December 10. On January 19, the Embassy requested a status report on the Salvadoran investigation. A follow-up diplomatic note was sent to the Salvadoran authorities requesting a status report on the investigation on February 2. On March 7, the Embassy requested a status report on the investigation from the Vice-Minister of Defense. The Vice-Minister of Defense informed the Embassy that a full report, including statements by the witnesses, was being forwarded to the Embassy. The Embassy received the report on March 31. The report has not been released publicly, and, if released, could prejudice the case.

In addition to Ambassador Hinton's direct involvement in the case, Embassy officers have spent countless hours on the case, meeting with military authorities, the medical examiner, and civilian authorities both in San Salvador and the Department capital nearest the incident.

Question 33. Under the Salvadoran code of military conduct, should not these individuals implicated in the death of Michael Kline be in detention?

Answer. The Salvadoran soldiers allegedly involved in the shooting of Michael Kline were placed in detention on March 1, 1983.

SECRETARY ABRAMS' RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED
FOR THE RECORD

Question 1. If the Salvadoran Government were doing all it could to improve the human rights situation, why would it be necessary for Acting Archbishop Arturo Rivera y Damas as recently as January 9 to describe the continuing violence as "an excess of madness that must be brought to a halt . . .?"

Answer. Acting Archbishop Rivera y Damas has frequently, and rightly, denounced the extraordinarily high level of violence in El Salvador. Neither he nor anyone else would suggest that the level of violence depends exclusively on actions of the government of El Salvador. For example, it is clear that an upsurge in guerrilla attacks will produce an upsurge in violence, despite any efforts by the Salvadoran Government to reduce the overall level of violence. What is encouraging is the continuing decline, for two years now, in the overall level of violence. This decline represents in part the successful and continuing efforts of the Salvadoran Government.

Question 2. Figures from Tutela Legal, affiliated with the Catholic Church, indicate that civilian deaths attributed to government forces dropped slightly in the past 6 months to an average of 386 per month, but also demonstrate the continuing brutality and savagery. Please comment on the contention that the government is not doing enough to curb such violence.

Answer. The efforts of the Salvadoran Government to curb violence have met with some success, and the overall level of violence has been declining for the last two years. Training of security officers, instruction by the International Committee of the Red Cross, and constant pronouncements by the government, have all played a role in achieving this result. Why has it not been possible to reduce violence further? El Salvador is currently suffering from violent guerrilla attacks, such as that which was recently targeted at the city of Berlin. The middle of a guerrilla war is obviously a difficult moment for any government to cope with violence against civilians. Moreover, the Salvadoran security forces have traditionally been ill-trained and lacking sufficient command and control structures. With our assistance, it is putting great effort into the professionalization of its security forces. We believe these efforts have already shown results, and give promise of even more.

Question 3. The certification document describes the Salvadoran criminal justice system as not functioning. Exactly what do you mean by this? How can you maintain that the human rights situation is improving when there is no mechanism for redressing grievances?

Answer. The human rights situation in El Salvador has improved in a number of ways. Perhaps the most important of these are the overall decline in the level of violence and the beginning of democratization. In a year in which a free and fair election was held, a new Constituent Assembly elected, and a civilian President inaugurated, the building of democratic institutions has been greatly advanced. At the same time, one area where there has not been progress is in the repair of the criminal justice system. Here, a combination of the intimidation and subordination of officials, and the overall violence in the society, have made it extremely difficult to arrest, try, convict and punish suspects. This phenomenon is common to countries undergoing rapid political and social changes while confronting violent guerrilla attacks.

Question 4. What changes are necessary for El Salvador to have a meaningful system of justice?

Answer. In order to put into place a meaningful criminal justice system, the following serious problems would have to be addressed: the disruptions caused by severe civil strife; acts of terrorism against judicial officials, especially at lower levels; inadequate police investigations; illegal use of public law enforcement

agents for private interests; and rules of evidence and procedures which now tend to discourage successful prosecutions. Moreover, a decline in the overall level of violence and an end to the guerrilla war would also be major contributing factors. Meanwhile, the U.S. Embassy is cooperating with private groups in trying to assist the Salvadoran Government in coping with this grave problem.

Question 5. What precisely are Salvadorans doing to address this lack of adequate legal system?

Answer. The policies of the Government of National Unity, as set forth in the August Pact of Apaneca, are designed to bring about pacification, democratization and reconciliation within the body politic of El Salvador. Success would also affect the operations of the criminal justice system by providing the climate necessary for attacking the specific problems enumerated in question 3 and getting the system operating effectively once again. Of about 3,650 prisoners in the Salvadoran penal system (including 809 prisoners held under State of Siege Decree 507) less than 300 have been convicted. The rest are awaiting trial. With respect to detainees under Decree 507, President Magaña is conducting a study looking towards a quicker resolution of the cases. The recently established government Human Rights Commission is also engaged in activities which could contribute to a more effective criminal justice system.

Question 6. The certification document notes that most abuses of prisoners occur during arrest, not during detention. How do you explain this? What specific measures are being taken to curtail such abuses? Have the police and national guard been detained or arrested for such abuses?

Answer. It is believed that most instances of torture are committed in clandestine detention cells by security personnel prior to turning the detainee over formally to the authorities for detention. The United States has repeatedly conveyed to high Salvadoran officials in the various security agencies our concern over the question of torture. There is some evidence to indicate that the performance of the National Guard has significantly improved in this regard. In the January 1983 Certification Report the Department said that it had received information from the Salvadoran Government that 141 regular military personnel were under detention for abuses of authority; however, it is not known whether any of these individuals has been detained for illegally mistreating prisoners. It is clear that additional efforts must be made to eliminate the practice of torture by Salvadoran security personnel.

Question 7. Do political prisoners have access to counsel when detained under Decree #507? What, if anything, is being done to speed processing of Decree #507 prisoners? The Americas Watch report states that most prisoners in Mariona prison have been in jail longer than the 180-day maximum limit before they must be taken before a judge.

Answer. Individuals charged under Decree #507 are subject to trial by military tribunals. Once remanded to the tribunals individuals may be held up to 180 days during a preliminary investigatory period which the tribunal may extend. Most of the approximately 800 political prisoners are in this extended status. They are not permitted legal representation during this period, nor are lawyers permitted access to evidence.

There is growing concern within the Government of El Salvador for the revitalization and reform of the criminal justice system. The system has not functioned effectively, particularly in prosecuting crimes associated with acts of terrorism from the violent right and left. Approximately 800 individuals arrested under Decree #507 are being held in the Mariona Penitentiary or the Ilopango Women's Prison. The Court continues to order the release of Decree #507 detainees, of whom 196 were released in 1982. Several cases also are currently under appeal before the Supreme Court.

The problems that currently plague El Salvador's criminal justice system are serious and inextricably tied to the political polarization in El Salvador. A resolution of this problem is essential to establishment of a criminal justice system that is just and efficient. The Department is in consultation with the Government of El Salvador regarding other measures that may be taken in the meantime to improve the system of criminal justice.

Question 8. The Americas Watch report casts doubt on the validity of the last Presidential certification with regard to the matter of the prosecution of military human rights abuse cases, stating that only 44 of the 109 reported cases are human-rights related. Is this true?

Answer. In our July 1982 certification document, we said the following with regard to the question of whether the Government of El Salvador was taking steps to gain control over its armed forces, and I quote:

"Military records show that of 109 members of the armed forces disciplined for abuses of authority during the certification period, 71 are pending investigation or have been dismissed and remanded to the civilian courts for trial for serious crimes. Of the remainder, 20 have been subject to military discipline for abuses. Of the 109, five were from the National Guard, three from the National Police, two from the Treasury Police, one from the Navy, and the remainder from the Army. Although adequate information is not available on the total number of civil defense members disciplined for abuses of authority, at least 20 have been dismissed or remanded to the civilian courts."

Note that the 109 cases cited referred to "members of the armed forces disciplined for abuses of authority during the certification period." We did not contend that all of these cases were directly related to human rights abuses. Subsequently, in researching with the Embassy in San Salvador the response to a question from the Congress concerning how many of these cases were human rights related, we learned, and reported to the Congress, that the number with specific human rights connections was 44.

We reject the Americas Watch effort to attempt to discredit the July certification on this basis. Disciplining personnel for "abuses of authority" clearly represents an effort to "gain control over the armed forces" and this information was validly included in the July certification report. When military personnel have reason to believe that their misdeeds will be punished, they are more liable to reform. We believe that an effort is being made in this regard, and continues.

Question 9. The coordinator of the Salvador Human Rights Commission has been quoted as saying that the Chief of the National Police (a member of the Commission) cannot be held responsible for the abduction of a citizen by the National Police in early December. What is the Administration's response to this question?

Answer. The Department has not seen the full text of the statement by the coordinator of the Salvadoran Human Rights Commission and thus is unable to comment on the specific incident alleged. Clearly, however, the Department believes that senior officers are responsible for ensuring discipline among their ranks and for seeing that violators are brought to justice.

Question 10. The Americas Watch believes that "torture and murder continue to be routine practice among the Salvadoran military and security forces. . . ." What is your assessment of this specific point?

Answer. Torture by elements of the Salvadoran armed forces does occur. It is not possible to establish the prevalence of torture because valid and systematic means for documenting cases do not exist. Some elements of the security forces engage in the use of psychological and physical coercion to extract information from suspected leftists, on some occasions on a prolonged and extreme basis.

Question 11. How would you judge the investigative capabilities of the Salvadoran police responsible for carrying out the investigation of the several deaths and disappearances of Americans? Are they adequate or not adequate to pursue investigation of the sensitivity of the murders and disappearances? What kind of political pressures are brought to bear on the Salvadoran police force? Are you satisfied that the Sullivan and Kline cases have received thorough investigation in El Salvador?

Answer. The Salvadoran police authorities do not have the technical capabilities of police forces in developed countries who have had years of experience in forensic, polygraph and other sophisticated techniques. Salvadoran police are competent in conducting investigations that require basic police skills including interrogation, analysis and coordination. When more sophisticated techniques are required their performance is less satisfactory. For this reason FBI assistance was requested and provided in the investigations of the churchworker and AIFLD murders. In a nation as politicized and polarized as El Salvador it is believed that the police have been subject to threats and other intimidation from other elements of the security forces and from rightist elements outside the government. The Department is pleased that three soldiers involved in the killing of Michael Kline have been under detention since March 1, 1983. The remains of John Sullivan were only positively identified in late February. Investigations of both deaths continue. We will be satisfied with the thoroughness of the investigations when those responsible for the deaths have been brought to justice.

STATE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. How many political prisoners are there in El Salvador? How many are held under Minister of Justice auspices, and how many are held under military jurisdiction? Have these prisoners been subject to torture?

Answer. As of January 1983, 809 individuals were being held under Decree 507, which establishes a special legal regime for the investigation and prosecution of crimes against the state (such as rebellion) and associated crimes (such as acts of terrorism). The 16 military tribunals which oversee these cases are under the jurisdiction of the Supreme Court.

The 809 individuals arrested under Decree 507 are being held in the Mariona Penitentiary or the Ilopango Women's Prison. There is evidence that many of the prisoners were tortured in clandestine detention cells prior to being assigned to prison. No evidence has come to light, however, indicating that the prisoners are tortured once they arrive at either prison. On the contrary, Embassy officials found the prisons clean and well-administered by both Salvadoran and U.S. standards.

Question 2. The certification document describes the Salvadoran criminal justice system as not functioning. Exactly what do you mean by this? How can you maintain that the human rights situation is improving when there is no mechanism for redressing grievances?

Answer. The certification document states that there is a growing concern in the Government of National Unity for the revitalization and reform of the criminal justice system, which has not functioned effectively, particularly in prosecuting crimes associated with acts of terrorism from the violent right and left. This problem has been clearly illustrated by the case involving the murder of AIFLD advisors and by the fact that trials for political crimes have been rare. Clearly, further improvement in the human rights situation in El Salvador rests on the ability of the Salvadoran Government to reconstruct an honest judicial system free of intimidation.

Since Ambassador Hinton's October 2 speech, in which he addressed the breakdown of the criminal legal system, Salvadoran attorneys, the press and the church have expressed their support for legal reform. The Government is currently reviewing the status of the approximately 800 political prisoners detained under the State of Siege Decree 507 with the objective of releasing those where insufficient evidence of guilt exists. President Magaña has also requested the judiciary to analyze Decree 507 and to make recommended changes. Progress in legal reform will not come quickly because the largest obstacle to judicial effectiveness is the pervasive terrorism and intimidation of judges, attorneys and jurists which can only be alleviated as the security situation improves.

Question 3. What changes are necessary for El Salvador to have a meaningful system of justice?

Answer. In order to put into place a meaningful criminal justice system, the following serious problems would have to be addressed: the disruptions caused by severe civil strife; acts of terrorism against judicial officials, especially at lower levels; inadequate police investigations; illegal use of public law enforcement agents for private interests; and rules of evidence and procedures which now tend to discourage successful prosecutions. Moreover, a decline in the overall level of violence and an end to the guerrilla war would also be major contributing factors. Meanwhile, the U.S. Embassy is cooperating with private groups in trying to assist the Salvadoran Government in coping with this grave problem.

Question 4. What precisely are Salvadorans doing to address this lack of adequate legal system?

Answer. The policies of the Government of National Unity, as set forth in the August Pact of Apaneca, are designed to bring about pacification, democratization and reconciliation within the body politic of El Salvador. Success in this would also effect the operations of the criminal justice system by providing the climate necessary for attacking the specific problems enumerated in Question 3 and getting the system operating once again. Of about 3,650 prisoners in the Salvadoran penal system (including 809 prisoners held under State of Siege Decree 507) fewer than 300 have been convicted. The rest are awaiting trial. With respect to detainees under Decree 507, President Magaña is conducting a study looking towards a quicker resolution of the cases. The recently established government Human Rights Commission is also engaged in activities which could contribute to a more effective criminal justice system.

Question 5. How many of the 141 regular military personnel under detention for abuses of authority are charged with what we would consider human rights crimes? What is your definition of a human rights crime?

Answer. The certification report states that 141 regular military personnel were disciplined for abuses of authority. This information was provided in the section of the Certification Report on "Control of the Armed Forces because the Department believes that disciplining military personnel, whether for specific human rights abuses or for other reasons, represents an effort to gain control over the armed forces. The Department does not at present know how many of the 141 are charged with "human rights abuses." We are attempting to obtain this information and will forward it upon receipt to the Committee.

We believe that, in the broadest sense, a "human rights crime" is any violation, for whatever reason and by any person, of the various rights relating to the integrity of the person enumerated in the Universal Declaration of Human Rights. In the context of evaluating the human rights situation in a given country, however, human rights violations generally are more narrowly defined as those abuses committed by persons in authority, whatever their motivation, and committed by others (terrorists or guerrilla groups) to further their political aims. For example, we would consider a murder committed because of differences in political beliefs—whether committed by a government official or by a guerrilla or terrorist group—as a human rights violation. We would not generally regard a murder committed because of a non-political motive as a human rights violation. We do regard physical abuse by government officials and military personnel as human rights abuses, whether stemming from political differences with the victims or from simple brutality. Among the violations considered generally to be "human rights crimes" are murder, disappearance, arbitrary arrest and detention without due process, torture and other forms of cruel and degrading treatment or punishment.

Question 6. How many of those who have been charged with human rights abuses have been brought to trial?

Answer. The Department does not know how many of those charged with human rights abuses have been brought to trial. We are attempting to obtain this information and will forward it upon receipt to the Committee.

Question 7. The American Watch report casts doubt on the validity of the last Presidential certification with regard to the matter of the prosecution of military human rights abuse cases, stating that only 44 of the 109 reported cases are human-rights related.

Answer. In our July certification document, we said the following with regard to the question of whether the Government of El Salvador was taking steps to gain control over its armed forces:

"Military records show that of 109 members of the armed forces disciplined for abuses of authority during the certification period, 71 are pending investigation or have been dismissed and remanded to the civilian courts for trial for serious crimes. Of the remainder, 20 have been subject to military discipline for abuses. Of the 109, five were from the National Guard, three from the National Police, two from the Treasury Police, one from the Navy, and the remainder from the Army. Although adequate information is not available on the total number of civil defense members disciplined for abuses of authority, at least 20 have been dismissed or remanded to the civilian courts."

Note that the 109 cases cited referred to "members of the armed forces disciplined for abuses of authority during the certification period." We did not contend that all of these cases were directly related to human rights abuses. Subsequently, in researching with the Embassy in San Salvador the response to a question from the Congress concerning how many of these cases were human rights related, we learned, and reported to the Congress, that the number with specific human rights connections was 44.

We reject as specious the Americas Watch effort to attempt to discredit the July certification on this basis. Disciplining personnel for "abuses of authority" clearly represents an effort to "gain control over the armed forces" and this information was validly included in the July certification report.

Question 8. The coordinator of the Salvadoran Human Rights Commission is quoted as saying that the chief of the national police (a member of the Commission) cannot be held responsible for the abduction of a citizen by the national police in early December. What is the Administration's response to this attitude?

Answer. The Department has not seen the full text of the statement by the coordinator of the Salvadoran Human Rights Commission and thus is unable to

comment on the specific incident alleged. Clearly, however, the Department believes that senior officers are responsible for ensuring discipline among their ranks and for seeing that violators are brought to justice.

Question 9. It is generally believed that the kidnapping of the FDR leaders in mid-October by the Treasury Police was done against the wishes of President Magaña and General García, but with the knowledge of Col. Francisco Moran, Chief of the Treasury Police. This argues against the contention that the government is in better control of its security forces. Please Comment.

Answer. The Government announced the arrests shortly after the international community expressed interest in the cases. A court investigation has been underway. An Embassy official has visited the political leaders at Mariona Prison, and found no evidence of mistreatment. That an investigation is under way, and there is no evidence of mistreatment, are positive signs.

Question 10. Has the U.S. Government discouraged Salvadoran political leaders from engaging in dialogue with the FDR?

Answer. To the contrary, the U.S. Government supports the Government of El Salvador's policy regarding dialogue. The Government of El Salvador has expressed its willingness several times to participate in negotiations or discussions with the guerrillas regarding the means of participation by the guerrillas in free and fair elections. Most recently, President Magaña offered to establish mechanisms for full participation in the upcoming elections. The Government of El Salvador has said that it will not, however, negotiate or discuss with the guerrillas regarding their participation in the government by any means other than through the electoral process. To do otherwise would destroy the democratic process which began last March. The United States will not support negotiations on power sharing because this would deny to the Salvadoran people their right to determine their own future.

We support, and will assist in any way possible, the Salvadoran Government's commitment to discussions with Social Democrats, Christian Socialists, and other elements of the FDR who renounce armed struggle and choose to participate in the democratic electoral process.

Question 11. Does not the abduction by security forces of leaders of labor unions and the Revolutionary Democratic Front between October 8 and 21, 1982, cast great doubt on the Salvadoran Government's commitment to political reform or its commitment to seek a political solution to the turmoil in El Salvador? Eight are now held in military jails, and at least six remain unaccounted for.

Answer. As stated in the report accompanying the Certification, the detention of the FDR leaders "dealt a setback to efforts for political reconciliation." As soon as knowledge of the detention reached Ambassador Hinton, he denounced the act. The Department of State quickly supported the Ambassador's denouncement. Subsequently, the Ministry of Defense moved quickly to ensure the protection of those abducted. The spokesman of the armed forces publicly announced the names of those arrested and stated that they would be held under the procedures set forth under Decree 507. They claim to have evidence implicating some of the detainees in supporting the guerrillas. While the case was a setback in terms of the efforts for political reconciliation, the overall handling of it, following their arrest, and the acknowledgement of other detentions, suggests some progress in greater respect for established legal procedures. In the past, similar arrests might not have been publicly acknowledged at all and those detained would have been listed as disappeared. The Government has denied having any knowledge of the six labor leaders whose whereabouts are unknown. In this case, family members, Embassy officers, as well as ICRC officials have been able to visit them in prison.

(a) What is the Salvadoran Government's explanation of this move against moderate political elements?

Answer. The Salvadoran Government, through the spokesman of the armed forces, publicly announced the names of those arrested and stated that they would be held under the procedures set forth under Decree 507. They claim to have evidence implicating some of the detainees in supporting the guerrillas.

(b) This indictment seems to support the contention that the government is not interested in working with the non-militant opposition to seek a political solution. What is your analysis of this incident?

Answer. As we have already stated, this was a setback in the process of reconciliation. We hope that the Peace Commission established March 1 will act to

formalize the process of reconciliation by providing a comprehensive amnesty as well as other measures for the security of anyone who wishes to participate in the country's democratic process.

(c) In light of this incident, how do you expect elements of the FDR opposition to return to El Salvador to dialogue with the government on a political solution?

Answer. An informal amnesty for guerrillas has been in effect and some 200 guerrillas have actually turned themselves in and have been relocated by the armed forces. When a general amnesty is declared, we expect the Peace Commission to also formulate the measures for protecting persons who take advantage of the amnesty. President Magaña recently announced that mechanisms would be established to guarantee full participation, by those so desiring, in the upcoming 1983 elections.

(d) How do you expect the government's offer of amnesty to those guerrillas who lay down their arms to be confidently accepted in light of this incident?

Answer. President Magaña, in his announcement of early elections stated the following: "Our peace program includes respect for human rights and an amnesty to facilitate the work of the Peace Commission to create the favorable conditions necessary for elections, by establishing mechanisms that will guarantee full democratic participation."

(e) How can open campaigning be conducted for the next elections in an atmosphere created by this event?

Answer. The question of establishing the right conditions for campaigning for the next elections was addressed by President Magaña on March 6 when he announced the decision to hold presidential elections in 1983 rather than in March 1984. In that statement he stated:

"Our peace program includes respect for human rights and an amnesty law to make it easier for the Peace Commission to create the favorable conditions necessary for elections, by establishing mechanisms that will guarantee full democratic participation. In fulfillment of its obligations, it shall undertake the activities necessary to incorporate all political sectors into the democratic process. By working closely with the Consejo Central De Elecciones (Central Council on Elections), with the collaboration of the Organization of American States and the cooperation of friendly countries, the Peace Commission will contribute effectively to the preparations and impartial conduct of an election that will ensure the aforementioned objectives."

Question 12. Is the U.S. Government in any way assisting in El Salvador to locate Eduardo Avila, accused in the case of the land reform specialists?

Answer. Eduardo Avila fled El Salvador, and to the best of our knowledge, his whereabouts are unknown. The U.S. Government is prepared to assist the Government of El Salvador in locating Eduardo Avila should the Salvadoran Government believe that such assistance would be useful.

Question 13. What is the status of extradition requested for Hans Crist? Is the case against that individual now dropped and his name cleared?

Answer. The extradition of Hans Crist to El Salvador was requested by the Salvadoran Government in April 1981. In June 1982, a U.S. Magistrate in Miami dismissed the extradition proceeding against Crist following an April 13, 1982, El Salvadoran judicial order suspending further criminal proceedings against him. The suspension order was based on the ground that insufficient evidence had been developed to implicate Crist in the murders.

Under Salvadoran law a criminal investigation may only be reopened within one year of a suspension decision upon petition by the Attorney General if he presents new evidence implicating the accused in the alleged offense. New evidence has to subsequently implicate Crist. In September 1982, the El Salvador Attorney General formally asked the court to re-open the case against Crist. The court's decision to re-open the case is still pending.

Question 14. Lt. Lopez-Sibrian has remained on active duty in spite of the charges against him. Why has he not been dismissed from the armed forces as others with crimes have been in order that the civil justice system may deal with him? Does the Salvadoran military justice system have any authority in this situation? If so, why has Lopez-Sibrian not been court martialled?

Answer. Through bribery, intimidation, or both, civilian charges against Lopez-Sibrian were dismissed in September 1982. The Salvadoran Attorney General has appealed the court order dismissing charges against him. That appeal is still pending. Efforts to prosecute him pursuant to a military law decree have also proven fruitless. In the absence of any civilian or military charges against him,

Sibrian remains in the armed forces. The United States Government is still vigorously working to see that a thorough administration of justice is done in this case.

We have made it clear to the Government of El Salvador at the highest levels that the Department of State is committed to a thorough prosecution of all persons involved in these murders including Lopez-Sibrian, and to pursuing this case, wherever it may lead until justice is done.

Question 15. The Sullivan family tells a rather alarming story of U.S. official lack of attention to the concerns of the Sullivan family and even to the clues provided by the family.

Given the number of murders of Americans that occurred in El Salvador at that time—December 1980 and January 1981—why did the Embassy not pay more attention to this disappearance?

Three certifications now have stated that all leads in the Sullivan case have been followed up. The Sullivan family's story of this case seems to refute that contention. Can you explain these discrepancies?

Answer. Mr. Sullivan's family announced on February 25 that a medical examiner engaged by them had identified Mr. Sullivan's body.

The following is a brief description of the efforts of the Department of State, and the Embassy in San Salvador, that resulted in the location of John Sullivan's body.

In June 1982, an anonymous letter to the Embassy reported that an unidentified body, which had been buried near San Salvador at Nuevo Cuscatlan might be that of Mr. Sullivan. The Embassy requested that this body be exhumed for examination and this was done in July 1982. Although circumstantial evidence supported the possibility of the remains being Mr. Sullivan's, the condition of the remains made normal means of forensic identification impossible. After examination, the Salvadoran medical examiner concluded that the remains were not those of Mr. Sullivan, and they were reburied.

The Department of State, however, had the Salvadoran medical examiner's x-rays of the remains re-examined in the United States and learned that the findings of the Salvadoran medical examiner might not be correct. The Sullivan family then engaged Dr. Frederick Zugibe, whose comparison of the x-rays of the remains with those previously taken of John Sullivan indicated a high probability that the remains were indeed Mr. Sullivan's; Dr. Zugibe asked for an opportunity to examine the actual remains before making a final identification. The Department of State concurred with the request of Dr. Zugibe and the Sullivan family that the examination of the actual remains take place in the United States. Efforts to arrange for the re-examination of the remains and their shipment to the United States were delayed by Salvadoran laws that prohibit transferring unidentified remains out of the country. It was only after extensive review of the law that El Salvador's Supreme Court could arrange a legal transfer of the remains to the United States for positive identification.

The record of the Embassy in San Salvador, and that of the Department of State, is clear. From the moment the Embassy learned of Sullivan's disappearance on the evening of January 4, 1981, every reasonable effort was made to locate Sullivan. It was not an easy task. Sullivan disappeared without a trace. The Embassy followed up on all leads which it received, most of which were frustratingly unproductive.

Question 16. Have you subsequently made any effort to interrogate individuals who have come forward since the location of the body now thought possibly to be Sullivan's.

Answer. The Embassy has recently established direct contact with the person who wrote the anonymous letter directing our attention to the Nuevo Cuscatlan remains, which proved to be those of Sullivan. You can be sure that the Embassy will pursue all information it receives from this person.

Question 17. What efforts are being made to bring the prospective body back to the United States? Is the Embassy making a serious effort to provide assistance in this instance?

Answer. Mr. Sullivan's body was returned to the United States on February 19, 1983. The Embassy provided assistance in bringing the remains to the United States.

Question 18. Michael Kline was killed on October 13. When and how was the Embassy notified that this United States citizen was killed by soldiers?

Answer. On October 16, Salvadoran military officials advised the U.S. Embassy that soldiers in the vicinity of San Francisco Gotera had shot a possible U.S.

citizen. The deceased was thought to have possibly been a U.S. citizen because the sole documents reported in his possession were travelers checks in the name of Michael Kline.

Question 19. Why are the soldiers who committed the murder still uncharged and still free on active duty?

Answer. We have been advised that the three soldiers present at the time of Michael Kline's death have been detained by the Armed Forces in San Francisco Gotera since March 1. We are now awaiting a full report of the investigation into Michael Kline's death.

Question 20. Has the Salvadoran Government undertaken an investigation?

Answer. Yes. On November 30 the American Ambassador met with the Defense Minister General, Jose Guillermo Garcia, and advised him that the Embassy would file an official note of protest with the Salvadoran Foreign Ministry, point out discrepancies between the soldier's report of the shooting and the official autopsy report (received by the Embassy on November 29), and ask for a complete investigation and prompt justice for anyone found guilty. General Garcia assured the Ambassador of his complete cooperation. On December 10 the U.S. Embassy sent a formal diplomatic note to the Foreign Minister pointing out the discrepancies surrounding Michael Kline's death and requesting a thorough investigation by the Government of El Salvador.

The Government of El Salvador is now investigating the Kline case. On December 15, as part of this investigation, Chief of Staff and Acting Minister of Defense Flores Lima dispatched a representative of the Estado Mayor (the General Staff of the Armed Forces) to San Francisco Gotera in pursuit of the Government of El Salvador's investigation. Julie Kline (Kline's sister) and Mrs. Kline's lawyers accompanied this group to Gotera by Salvadoran military helicopter.

Question 21. What has been the nature of the Embassy's inquiries to the Salvadoran Government on the case?

Answer. Positive identification of Michael Kline and establishment thereby of his United States citizenship was not made until November 15, 1982. This delay was caused by a number of factors. These included: The reports, according to the Salvadoran military, that the deceased had no identification or papers in his possession, except for travelers checks in the name of Michael Kline; our discovery, upon inquiry with American Express, that at least part of those travelers checks had earlier been reported by Michael Kline as having been stolen; our inability to confirm whether Michael Kline, who had been traveling in Mexico, had had any intention to travel to El Salvador; and, the delay in transmitting Michael Kline's medical records to San Salvador. Mrs. Renate Kline, the mother of Michael Kline and next of kin, was notified by the American Consulate in Hamburg, Germany of the official determination on November 17. According to her wishes, the American Embassy in El Salvador requested the Salvadoran authorities to perform an autopsy. On November 30, 1982, the day after the U.S. Embassy in El Salvador received the official autopsy report, the American Ambassador to El Salvador met with the Salvadoran Minister of Defense to inform him of the discrepancies between the soldiers' account of Michael Kline's death and the autopsy report, and to request an investigation and prosecution of any criminal offenses.

The Embassy followed up with a diplomatic note on December 12 pointing out in detail the discrepancies between the autopsy report and the soldier's report. The note also transmitted a list of points for clarification and investigation. On January 19, 1983, the American Embassy requested a status report on the Salvadoran investigation. The Embassy was informed that the investigation was underway and that they would be provided a copy of the investigation report when complete. On February 2, a follow-up diplomatic note was sent. On February 9, the Ministry of Foreign Relations informed the Embassy by diplomatic note that the complete investigative report had not yet been received but assured the Embassy that it would be informed as soon as it was received. On March 7, the Vice Minister of Defense informed the U.S. Deputy Chief of Mission in El Salvador that the three soldiers at the scene at the time of Michael Kline's death had been placed in detention by the Armed Forces in San Francisco Gotera since March 1, and that a full report of the investigation was being forwarded to the U.S. Embassy in response to our formal request for an investigation.

Question 22. An Embassy official has interviewed some people. Who did he interview and what were his findings?

Answer. On October 21, a consular officer visited San Francisco Gotera, Department of Morazan, in order to speak to the soldiers present during the shooting of Michael Kline. The consular officer spoke with Sgt. Lopez Garcia and his superior Lt. Col. Zepeda Velasco. Sgt. Lopez recounted to the consular officer the circumstances surrounding Kline's death. This account was the same as the one he had given his superior immediately after the shooting. Sgt. Lopez stated that Michael Kline was taken off the bus because he did not have identification and was acting suspiciously. According to Sgt. Lopez, Michael Kline did not speak to him in Spanish and did not appear to understand Spanish. Sgt. Lopez said that he and two other soldiers commandeered a truck to take Michael Kline to San Francisco Gotera. About 6 kilometers from the checkpoint, Sgt. Lopez stated Michael Kline grabbed for one of the soldiers' rifles and jumped from the truck. Sgt. Lopez said that they ordered Michael Kline to stop, fired in the air, but he kept running, whereupon Kline was shot three times at a distance of about 30 feet, killing him.

Question 23. Did the official interview the driver of the pickup the soldiers commandeered to take Kline to military headquarters?

Answer. The Embassy has attempted to contact and interview the driver, unsuccessfully thus far.

Question 24. Has there been any attempt made by the State Department to question the driver of the bus Michael was taken from?

Answer. The Embassy has sought to locate the bus driver through the bus company. However, the bus company has been unable to identify the driver of the bus, and the Embassy therefore has not been able to question him. (It should be noted, that in the Embassy's December 10, 1982, note to the Salvadoran Foreign Ministry, the Government of El Salvador was specifically requested to "make all appropriate efforts to locate and interview all witnesses.")

Question 25. Has the State Department or the Embassy shared the information developed by the official who interviewed soldiers involved in the killing with Ms. Kline or her lawyers?

Answer. Yes. On December 12, Mrs. Kline and her lawyers met for over 2 hours with Embassy officials in San Salvador. The consular officer who interviewed the soldiers present at the shooting showed his report to Mrs. Kline's party and provided them with full details of his findings. Additionally, State Department officials met with Mrs. Kline in Washington, D.C. on February 4 and read the same consular officer's report to her.

(Mrs. Kline will soon receive a copy of this report along with other documents after review by the Department's Freedom of Information Staff, which is at this time processing a third tranche of documents pursuant to Mrs. Kline's request. Mrs. Kline has already received more than 150 documents relating to her son, but when the first groups of documents were reviewed, this particular document had not yet arrived in Washington, D.C.)

Question 26. Is the U.S. Government doing all it can do to see that the Salvadorans pursue this case?

Answer. The Embassy has pursued this case actively since being informed of the incident by the Salvadoran Government. We will continue to press at the highest levels of the Salvadoran Government our concerns for a thorough investigation.

DEFENSE DEPARTMENT'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY
SENATOR ZORINSKY

Question 1. Have there been any changes in the 1981 rules for arming and equipping U.S. advisors? If so, please describe these changes.

Answer. There have been no changes made in the 1981 terms of reference for El Salvador as pertains to arming and equipping U.S. trainers. The use of the term "advisers" in reference to El Salvador is incorrect, since U.S. security assistance personnel in El Salvador provide general training support and are referred to as trainers.

Question 2. Are U.S. advisors in El Salvador, or any group of U.S. advisors, ever supplied with M-16s on a regular basis?

Answer. U.S. security assistance personnel in El Salvador carry individual weapons for personal self defense including M-16s when the situation warrants.

Question 3. Have circumstances arisen in which U.S. advisers have been supplied with M-16s? What is the nature of these circumstances, and how frequently have these situations arisen?

Answer. The U.S. Ambassador in El Salvador has authorized all U.S. military trainers to carry M-16 rifles in vehicles or helicopters when leaving San Salvador. This authorization is caveated by the injunction that M-16 rifles will not be carried when on the ground outside of the vehicles or helicopters. Although most training by U.S. military personnel is conducted in San Salvador, occasionally training occurs elsewhere, necessitating additional protection.

Question 4. What are the current rules of engagement for U.S. defense personnel in El Salvador?

Answer. There are no "rules of engagement" as such. The "terms of reference" for El Salvador govern the conduct of U.S. military personnel serving there with respect to weapons and self-defense. Current terms of reference dated 6 March 1981 dictate the following: Weapons. Personnel will carry individual weapons for personal self defense only, as outlined in the following self defense rules:

Use of force. Force may be applied within the constraints of these rules only for the following purposes:

In self defense (self defense means necessary action to defend oneself against imminent danger of death or serious bodily injury).

To protect against loss of life of another U.S. military member.

General rules.

Use only the minimum force required.

Do not overreact to minor physical or verbal abuse.

Be courteous in all dealings with civilians and other personnel in the country in which deployed.

U.S. military personnel will not go on land or sea patrols, fly in helicopters on combat missions, or be otherwise placed or place themselves in a situation where combat is likely.

U.S. military personnel will not be garrisoned or work in areas where there is a heavy concentration of guerrilla forces or in areas where there is the likelihood of being overrun.

In the event of involvement in a fire fight, the individual must avoid taking an active part. He may operate weapons and/or participate with host country personnel in combat operations only if such is essential to the preservation of his own life or to protect against loss of life of another U.S. military member.

Specific rules for personnel.

MTT personnel have only a training mission and will not accompany host country forces on any mission intended as a combat operation, offensive or defensive, or into any situation where there exists an imminent probability of involvement in combat operations, offensive or defensive.

Helicopter support personnel have only a non-combat maintenance support mission and will not accompany host country forces on any mission intended as a combat operation, offensive or defensive, or into any situation where there exists an imminent probability of involvement in combat operations, offensive or defensive.

COMUSMILGP will ensure that each U.S. military member entering/operating in El Salvador reads and is knowledgeable of these terms of reference ASAP after arrival in El Salvador for duty.

Question 5. Are there any U.S. defense personnel currently serving in El Salvador who are receiving hostile fire pay? If so, how many are receiving this pay and what is the rationale for awarding it?

Answer. During the pay period 1-31 December 1982, there were two Special Pay awards to U.S. Defense personnel. This is the most recent pay period for which we have data. The rationale for awarding Special Pay for duty subject to hostile fire is found in section 310 Title 37 U.S. Code.

Question 6. The certification document notes that most abuses of prisoners occur during arrest, not during detention. How do you explain this? What specific measures are being taken to curtail such abuses? Have the police and national guard been detained or arrested for such abuses?

Answer. Defer to the Department of State for appropriate response.

Question 7. The Americas Watch believes that "torture and murder continue to be routine practice among the Salvadoran military and security forces . . ." What is your assessment of this specific point?

Answer. Our assessment indicates that serious abuses and offenses are not routine in the Salvadoran military. Unfortunately, due to funding limitations and restrictions in security assistance, U.S. training has been able to touch only about ten percent of the Armed Forces and none of the security forces.

Question 8. Why did the Defense Department determine some time ago to change its counting procedures to use average numbers of U.S. military personnel in El Salvador rather than absolute numbers. Do you plan to have any more than 56 trainers in El Salvador in the future?

Answer. DOD has not changed its accounting procedures. The number of U.S. trainers in El Salvador will depend upon the resources available.

Question 9. In FY 1983, it is presumed that there will be approximately \$26 million in military assistance available for El Salvador. For what precisely will these funds be used?

Answer. The \$26.3 million authorized for security assistance for El Salvador under the 1983 CRA has already been expended on training and materiel support to the Salvadoran Armed Forces. Training has taken place in country (through Mobile Training Teams), in the United States (e.g., pilot instruction and professional military education), and in Panama (e.g., maintenance and patrolling). Materiel provided includes ammunition, small arms, spare parts, personal equipment, and vehicles.

Question 10. Some reports indicate that the military has virtually conceded the northern part of the country to the guerrillas. What is your assessment of the situation?

Answer. The Armed Force of El Salvador concluded a major counteroffensive in northern Morazan Department 6-7 February 1983, and has stationed forces in the area to discourage insurgent re-entry.

Question 11. What is the role of the U.S. military group and the advisors in the present military situation? How closely are they participating with fighting units of the Salvadoran military? What has been the result of USSOUTHCOM's investigation into events associated with the wounding of SSGT Stanley, who apparently was ordered to "support" a Salvadoran unit in combat, and the subsequent dismissal from the country of two warrant officers and a master sergeant?

Answer. Section 5i5 of the Foreign Assistance Act of 1961, as amended, specifies the following functions for U.S. security assistance organizations (to include military groups):

- Equipment and services case management,
- Training management,
- Program monitoring,
- Evaluation and planning of the host government's military capability and requirements,
- Administrative support,
- Promoting rationalization, standardization, interoperability, and other defense cooperation measures among members of the North Atlantic Treaty Organization and with the Armed Forces of Japan, Australia, and New Zealand, and

Liaison functions exclusive of advisory and training assistance.

Outside the military group, there are no U.S. advisors in El Salvador, only U.S. trainers. The trainers provide training in such areas as internal defense and development, intelligence, logistics, maintenance, communications, patrolling and combat skills (e.g., rifle marksmanship, first aid, map reading, tactics). Human rights considerations are stressed by the trainers as well as by the MILGP in its contacts with the Salvadoran military leadership. Neither USMILGP nor training personnel are authorized to participate in combat operations with the Salvadoran military. U.S. personnel are further restricted to areas in which the possibility of involvement in hostilities is considered minimal (recognizing that in a country subjected to an insurgency there are no absolutely secure areas). A formal investigation under the provisions of Army Regulation 15-6 into the circumstances surrounding the SGT Stanley incident is underway. Results are not yet available.

Question 12. Given that three Salvadoran soldiers apparently indicated that they shot Michael Kline and that powder burns on the body indicate Kline was shot at close range, why are the three soldiers still at large and still on active duty? If three soldiers appeared before authorities in the U.S. Army and said they had shot an individual, would they still be on active duty?

Answer. Defer to the Department of State for appropriate response.

Question 13. What specific representations has Ambassador Hinton made to the Salvadoran authorities on the Kline case? Please enumerate.

Answer. Defer to the Department of State for appropriate response.

Question 14. Under the Salvadoran code of military conduct, should not these individuals implicated in the death of Michael Kline be in detention?

Answer. Defer to the Department of State for appropriate response.

Question 15. Lt. Lopez-Sibrian has remained on active duty in spite of the charges against him. Why has he not been dismissed from the Armed Forces as others with crimes have been in order that the civil justice system may deal with him? Does the Salvadoran military justice system have any authority in this situation? If so, why has Lopez-Sibrian not been court-martialed?

Answer. Defer to the Department of State for appropriate response.

Question 16. If Lt. Lopez-Sibrian had been a member of the U.S. Army, how would this case have been handled? Would he still be on active duty, given the evidence that seems to implicate him in this murder case?

Answer. This question, which is hypothetical, is difficult to answer. The evidence against Lt. Lopez-Sibrian would have been evaluated by an investigating officer appointed under the provisions of Article 32 of the Uniform Code of Military Justice. If the investigating officer determined that the evidence was sufficient to warrant trial by court martial, he would recommend trial to the general court martial convening authority. If the convening authority agreed with the recommendation, he would refer the case to trial. Pending final resolution of the case, however, the accused would remain on active duty. There would be no certainty that a court would ultimately convict the accused. Under the U.S. System of Criminal Law the accused is presumed innocent until proven guilty.

Question 17. Given that three Salvadoran soldiers apparently indicated that they shot Michael Kline and that powder burns on the body indicate Kline was shot at close range, why are the three soldiers still at large and still on active duty? If three soldiers appeared before authorities in the U.S. Army and said they had shot an individual, would they still be on active duty?

Answer. Defer to the Department of State for appropriate response.

MR. BALOYRA'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. What is your opinion of the Human Rights Commission recently established by the Salvadoran Government? Can it be an objective body with the head of the National Police, Col. López Nuila, as one of its seven members? What perspective do other members have?

Answer. Establishing the Commission is a modest step in the direction of legitimizing the issue of Human Rights in domestic Salvadoran politics but is not likely to bring a dramatic improvement in the HR violations by the security forces. The conservative Salvadoran element has a very strong aversion to this topic going back to 1977, when the Carter administration began to emphasize this issue as a foreign policy concern. Since this element controls not an insubstantial segment of the media it is important that the government put the defense of H.R. in the forefront of political communication in El Salvador. Is this enough?

Certainly it is not. In the entendues of Salvadoran political culture the mere formation of the Commission may be read as a palliative that is designed to calm down the wrath of a few members of the U.S. Congress. I find Colonel López Nuila's presence in the Commission very problematic in this regard. That presence could be interpreted by those who would have more to lose as a sign that there is not much reason for concern. On the other hand, the National Police has not been the worst violator of H.R. in El Salvador and President Magaña, faced with the need to sell the idea of the Commission to the military, may have found it expedient or perhaps necessary to appoint López Nuila.

Consonant with the position that I expressed in the testimony I believe that we have to make the government govern. If the Commission is going to serve that end fine, if not it would be preferable to ask or suggest to Magaña that he appoint a Cabinet-level official in charge of Human Rights.

It will be important to watch the behavior of Msgr. Fredy Delgado in the Commission. He is, to my knowledge, the only member of the Commission who has indicated that he will resign unless the Commission has an impact. I cannot comment on the perspective of the other members of the Commission.

Question 2. Americas Watch and other organizations have charged that the Salvadoran military and security forces continue to routinely practice murder and torture. Please comment on this.

Answer. Please refer to Section II, p. 6 in the Report submitted by the administration where you can read, "... there is compelling information that elements of the security forces are responsible in many cases." This is self-explanatory. Let us not play with numbers. This remains the key ingredient in the Salvadoran process of transition. No one in El Salvador will believe that the government is willing/able to cope with the H.R. question unless the murderers of Msgr. Romero, the four American religious, and Mr. Viera and the AID and AIFLD officials are brought to justice. If the government cannot deliver on these then, ordinary Salvadorans must reason, the government cannot or does not want to address the issue. The government needs credibility and one successful prosecution in one of these cases is worth \$10 million in aid.

It must be remembered that while human rights is not the only issue we must address, government performance on this issue will be the acid test of where the Salvadoran transition is going. In short, human rights is not, in the context of a process of transition, a humanitarian but an essentially and intrinsically political issue.

Question 3. One of the principal disputes surrounding present-day El Salvador policy centers on whether the Salvadoran Government should engage in negotiations with the opposition FDR/FMLN. What do you believe the outcome of negotiations would be?

Answer. Both the administration and the Salvadoran right coincide in that there is nothing to negotiate, that the Left cannot be given what it has been unable to obtain through elections or in the battle field. Then, when the democratic aperturists on the Left have tried to explore negotiations they have been apprehended. This is ludicrous.

I believe that the twain can and must meet. I believe that what has to be negotiated is how the Left can participate in the only mechanism that we find acceptable to identify who the Salvadoran people want as their government. To be sure, we cannot expect that individual leftists are simply going to lay down their weapons and show up in their neighborhoods as if nothing had happened. It is unrealistic to expect that the Left can be incorporated on the basis on individuals' acceptance of an amnesty. Incidentally, the latter is also a necessary legitimizing instrument.

The outcome of the negotiations, in short, should be an electoral process that incorporates the Left, that can guarantee the security of all, and that can prevent any one group or faction from becoming hegemonic.

DR. STANBURY'S RESPONSE TO AN ADDITIONAL QUESTION SUBMITTED BY SENATOR PELL

Question 1. In the coming months, the warfare could move south and endanger larger segments of the civilian population. What do you think of the potential this has for creating an even more fertile field for human rights abuses against innocent citizens?

Answer. My delegation dealt with a subset of human rights, which is health rights. We defined these under nine rubrics as follows:

- The right to exist as a person.
- The right to freedom from torture.
- The right to normal psychologic, physical and intellectual development.
- The right to minimal nutritional needs.
- The right of health workers to teach and to learn.
- The right to neutrality in rendering and receiving medical care.
- The right to dispense medical care without fear of reprisal.
- The right to receive medical care without fear of reprisal.
- The right to reasonable and equitable health care.

Continuing and extension of the warfare would, in my opinion, almost surely create a more fertile field for abuses of these rights against innocent citizens. This would apply particularly to the right of children to normal development, a right which is already violated for thousands of children in El Salvador.

MR. MESSING'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED BY SENATOR PELL

Question 1. What is your opinion of the recently established Human Rights Commission by the Salvadoran Government? Can it be an objective body with the head of the national police, Col. Lopez Nula, as one of its seven members? What perspective do other members have?

Answer. I do not have enough information on the first part of this question. In regard to the second part, I understand Mons. Delgado is on this Commission. I feel he represents an objective view and is one of the over 300 out of 345 or so Catholic clergy not polarized to the radical left.

Question 2. Americas Watch and other organizations have charged that the Salvadoran military and security forces continue to routinely practice murder and torture. Please comment on this.

Answer. Should that be remotely true of outlaw elements of these forces, their measure of violence is only a fraction of the terrorist guerrillas.

Question 3. The Americas Watch has cast doubt on the validity of the Administration's reporting on the Salvadoran Government's performance regarding prosecution of military personnel charged with human rights abuses. Does Americas Watch have more specified data on disciplinary actions against personnel involved in human rights abuses? Would the other witnesses like to address this issue?

Answer. Americas Watch would be better served, observing and reporting the gross violation of the Communist Cuban Government on the people of Central and Latin America, Africa and Afghanistan that escalate these cycles of violence.

Question 4. In the coming months, the warfare would move south and endanger larger segments of the civilian population. What do you think of the potential this has for creating an even more fertile field for human rights abuses against innocent citizens?

Answer. The growing warfare is a direct result of terrorist guerrillas activity. Every bridge blown throws more out of work, causes more starvation and turmoil. It is the terrorist guerrillas who are promoting the mass increase in human rights violations, as the warfare increases its pace.

Question 5. The Coordinator of the Salvadoran Human Rights Commission has quoted the chief of the national police as saying he cannot be held responsible for the abduction of a citizen by the national police in early December? Is this a prevalent attitude within the Salvadoran Government?

Answer. Every element of the government and political structure I have talked to, understands that even though they are in a desperate situation, they must promote a Judeo-Christian ethic in combating this Communist sponsored insurgency.

DR. GELLHORN'S RESPONSE TO AN ADDITIONAL QUESTION SUBMITTED BY
SENATOR PELL

Question 1. In the coming months, the warfare could move south and endanger larger segments of the civilian population. What do you think of the potential this has for creating an even more fertile field for human rights abuses against innocent citizens?

Answer. Under current circumstances, this would indeed in my personal opinion escalate the brutality and mindless killing of non-combatant citizens, increase the tragic exodus of those able to flee, the old, the women and their children, to the over-crowded, disease-ridden, semi-starving refugee camps in San Salvador and further polarize the people of the country. This is under current circumstances. If we should make the tragic error of increasing military equipment and supplies and add to our contingent of "military advisers," there can only be a quantitative increase in the violations of human rights and further deterioration in the economic and human health of this country.

In my personal capacity as a concerned citizen and a physician sensitive to pain of people and to the impact on health of the varieties of destructions and distortions of constructive resources, I plead that the United States through its Congress insist that the solution to the divisive issues of El Salvador be approached through political negotiations between the contestants, not by the ambiguity and fruitlessness of the force of arms.

MR. KASS' RESPONSE TO AN ADDITIONAL QUESTION SUBMITTED FOR THE RECORD

Question 1. The Americas Watch has cast doubt on the validity of the Administration's reporting on the Salvadoran Government's performance regarding prosecution of military personnel charged with human rights abuses. Does Americas Watch have more specific data on disciplinary actions against personnel involved in human rights abuses? Would the other witnesses like to address this issue?

Answer. This issue is addressed at pages 29-33 of our Report for The Association of The Bar, copies of which are attached to my testimony—see, in particular, the comments on pages 31-33, which indicate that the administration reporting of alleged cases of prosecution against military personnel is essentially useless at this time since (a) it is based entirely on unconfirmed government reports (verbal) in January 1983, (b) no back-up data was obtained to support those statistics, and (c) most importantly, none of the cases cited by the Administration seems to involve the murder or torture of alleged "subversives" by military personnel, the principal area of human rights abuses.

MR. TORRES' RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. What is your opinion of the recently established Human Rights Commission by the Salvadoran Government? Can it be an objective body with the head of the national police, Col. Lopez Nulla, as one of its seven members? What perspective do other members have?

Answer. The recently established Human Rights Commission is severely limited in its ability to perform for many reasons, not the least of which is the fact that it, like the Salvadoran Government, is made up of many divergent individuals. On our recent trip to El Salvador as part of the Commission on U.S./Central American Relations a LULAC representative met with the following members of the Human Rights Commission: Dr. Mario Velasco; Mr. Cristobal Aleman, a peasant leader; Monsignor Freddy Delgado; and Mr. Cestoni, an employee of the Commission.

These members informed us that the Commission has a budget of \$1,150,000 for its first year, that they have a wide mandate to pursue and obtain information from civil and government agencies, but that their authority is more moral than legal. When we asked for concrete information on the cases they have investigated and the kinds of success they have had, we were told that their investigations of special cases are private, and that names and specific information cannot be made public because of the danger it might present to various individuals.

There has been, however, one incident made public in which the Human Rights Commission, or at least one of its members did, investigate. On February 28, 1983 the Washington Post reported an incident in which uniformed soldiers bound and killed 18 peasants. The incident reportedly took place because local landowners had "wanted to destroy (a farm cooperative) in order to get the property." The Human Rights representative who investigated the killings reported that "the problem here is that no one will talk . . . They have been threatened by the authorities, who threaten to cut out their tongues if they say anything."

We believe that the creation of an official Human Rights Commission is a most positive step and that the investigation of the forementioned incident is laudable. We have serious concerns, however, about the potential for effectiveness of the Commission because of the possible conflict of interests within the Commission, because of the fears of Commission members to act boldly within their difficult and rather sensitive positions, because of the reluctance of individuals to present their cases to a government body, and because of the tenuous formation of the Commission. The concerns of the present United States administration to oversee and legitimize the situation of the Salvadoran Government no doubt played a role in the formation of the official Human Rights Commission. It is interesting to note that when we spoke with the Salvadoran Embassy they informed us that the names of the members of the Salvadoran Human Rights Commission were not presently available to them and recommended that we speak with the State Department.

Question 2. Americas Watch and other organizations have charged that the Salvadoran military and security forces continue to routinely practice murder and torture. Please comment on this.

Answer. From our experiences in El Salvador, we would have to concur that Salvadoran military and security forces continue to use torture and murder as means to terrorize and control the population. In January of this year we witnessed the scars of a young professor who was being held as a political prisoner and who had been severely burnt on his arms, back and chest with hydrochloric acid. We also heard the story of a woman whose 23-year-old daughter had been raped on the street by three uniformed soldiers on December 28, 1982. We heard numerous stories from people who reported that their homes had been burned by the military and/or whose relatives had been killed, tortured, or disappeared by military forces. Indeed, several of our own American citizens who have been killed in El Salvador have been tortured or raped before being killed. We have no evidence that the situation has changed since October 29, 1982 when Ambassador Deane R. Hinton told the U.S.-Salvadoran Chamber of Commerce that "the gorillas of this mafia (the right-wing elements of the security forces), every bit as much as the guerrillas in Morazan province, are destroying El Salvador."

Question 3. The Americas Watch has cast doubt on the validity of the Administration's reporting on the Salvadoran Government's performance regarding prosecution of military personnel charged with human rights abuses. Does Americas Watch have more specific data on disciplinary actions against personnel involved in human rights abuses? Would the other witnesses like to address this issue?

Answer. It is logical that the Salvadoran Government should have a difficult time prosecuting military personnel charged with human rights abuses. The government itself is made up of very diverse political representatives, none of whom has unified support and many of whose lives might be in danger if they were to act without discretion. It is not entirely clear that the government has the power to prosecute military personnel, yet military and para-military groups have historically chosen and "judged" figures in the Salvadoran Government according to their own criteria.

The military forces are also a political institution in El Salvador. A Washington Post article of March 3, 1983 points out that combat leadership is seriously weakened due to the fact that Defense Minister General Jose Guillermo Garcia "has appointed many political allies to key army posts (who protect) Garcia from his foes." Within the military institution the integrity of officers is respected, as is evidenced by the fact that officers dismissed from the armed forces often receive high diplomatic posts or other such recognition, and by the fact that no member of the security forces has been disciplined for murdering, kidnapping, torturing, or raping civilians alleged to be subversive.

We do not anticipate any change, beyond superficial ones, as long as the military is assured U.S. backing and until an effective judicial system is institutionalized in El Salvador.

Question 4. In the coming months, the warfare would move south and endanger larger segments of the civilian population. What do you think of the potential this has for creating an even more fertile field for human rights abuses against innocent citizens?

Answer. Certainly as the war escalates the numbers of non-combatant as well as combatant deaths will increase: violence will breed more violence. Too, if the role of the United States is increased in El Salvador and the Salvadoran military receives increased U.S. aid, the deaths and human rights abuses will undoubtedly rise proportionately. An example of the kinds of suffering which we can anticipate should the war escalate is that of Berlin, which was captured by rebel forces in early February of this year. According to a Washington Post article of February 7 of this year, Archbishop Arturo Rivera y Damas and others reported that the Salvadoran Army responded to the takeover by killing "many" civilians and indiscriminately bombing or rocketing civilian-populated areas in effort to dislodge the guerrillas.

Question 5. The Coordinator of the Salvadoran Human Rights Commission has quoted the chief of the national police as saying he cannot be held responsible for the abduction of a citizen by the national police in early December. Is this a prevalent attitude within the Salvadoran Government?

Answer. The attitude of feeling that one cannot be held responsible for actions taken by those he is supposed to supervise is prevalent within the Salvadoran Government. The disunity within the government, disunity between the government and security forces, disunity within the security forces, the lack of an effective judicial system, and rampant corruption, all provide for a climate

in which few, if any, in the Salvadoran Government accept responsibility for those they supervise.

Question 6. One of the principal disputes surrounding present-day El Salvador policy centers on whether the El Salvadoran Government should engage in negotiations with the opposition FDR/FMLN. What do you believe the outcome of negotiations would be?

Answer. The present situation in El Salvador offers three outcomes: a military victory for one side or another (neither of which would be very secure) or some form of a meeting of the minds. There has been reference to the last alternative from both sides of the political spectrum. The FDR/FMLN has called for discussions through which their concerns regarding the entire political and military structure could be addressed and through which advances could be made towards fully representative elections. The Salvadoran and American Governments have expressed willingness to discuss with the FDR/FMLN their participation in elections. The positions of the FDR/FMLN and the Salvadoran and American Governments are close enough, then, that some sort of dialogue could potentially take place. Certainly a political forum for resolving the conflict is more rational and humane than a continuation or escalation of the war, and certainly there is nothing to lose by talking.

The outcome of negotiations would probably be some sort of compromise on at least some of the major issues (for example, effecting certain reforms which would be Salvadoran rather than initiated by the United States, or accommodating certain changes in preparation for elections, or guarantees for leftist participation in the elections). Certainly not all of the parties involved will be amenable to the idea of negotiations, but it has the potential of creating some form of a center and of legitimizing future elections. Elections without the participation of the left will once again be meaningless at best. In his report of the Parliamentary Human Rights Group, British observer Lord Chitnis wrote the following of the 1981 elections in El Salvador:

"It did not occur to him (Ambassador Deane Hinton) that the elections would make matters worse, as in the event it did by producing a far Right majority in the Constituent Assembly, and this was a dreadful misjudgment."

It is in the best interest of all involved, including and perhaps especially the United States, that the civil war and social strife in El Salvador have a political solution. The climate is ripe for such a solution and the time to act on such an alternative is now.

AMERICAN INSTITUTE FOR
FREE LABOR DEVELOPMENT,
Washington, D.C., February 15, 1983.

COMMITTEE ON FOREIGN RELATIONS,
Dirksen Building,
Washington, D.C.

This letter is in response to "Questions on El Salvador Certification for Written Response by Public Witnesses," which was directed to me in correspondence of February 4, 1983.

1. The first question concerns specific data with regard to disciplinary actions against military personnel involved in human rights violations. The AIFLD is not in a position to evaluate the relative competence of Americas Watch (in comparison with the U.S. government) in obtaining such information. The AFL-CIO/AIFLD can comment with authority only in the case of the Hammer-Pearlman-Viera murders, and we have quite extensively outlined our position in our February 2, 1983 presentation to the U.S. Senate Foreign Relations Committee.

2. We cannot authenticate remarks attributed to the Chief of the National Police. However, we would not interpret these alleged remarks as being a prevalent attitude within the Salvadoran Government." It is readily acknowledged at all levels of the government that problems exist with regard to control of military and police personnel, and (in addition) with regard to the availability of resources and techniques for criminal investigation, and in the prosecution of criminals by the judicial system.

3. At the present time, we find it difficult to believe that justice in the land reform workers case can be obtained. The AFL-CIO position is quite clear, as presented in our February 2 testimony, in demanding a restructuring and/or other reforms in the Salvadoran judicial system.

4. We sincerely believe that the charges against Lt. Lopez Sibrian being dropped for "insufficient evidence" was a result of both bribery and the important political connections which he enjoyed with members of the extreme right-wing of Salvadoran society.

If we can be of any further help, please do not hesitate to call or write.

Sincerely,

WILLIAM C. DOHERTY, Jr.,
Executive Director.

[Whereupon, at 6:02 p.m., the committee adjourned, subject to call of the Chair.]